

**REGULAR MEETING OF THE CARBON COUNTY PLANNING
BOARD**

MAY 21, 2024 TUESDAY 7:00 PM

**CARBON COUNTY PERSONAL SERVICES BUILDING
10 OAKES AVENUE SOUTH
RED LODGE, MT**

A. CALL TO ORDER

B. ROLL CALL

C. APPROVAL OF MINUTES OF PREVIOUS MEETING

April 16, 2024

D. PUBLIC HEARINGS

None

E. REGULAR BUSINESS

1. Miller Montana Ranch Subdivision – Discussion and
Recommendation to County Commission

2. Hellroaring Ranch Subdivision – Discussion and
Recommendation to County Commission

3. Grewell Conservation Easement

4. Carbon County Road and Bridge Group 2 Development Permit for Storage Building on Rodeo Road – Tabled from April Meeting

F. PETITIONS & COMMUNICATION FROM AUDIENCE

G. WRITTEN COMMUNICATIONS

H. REPORTS FROM PLANNING BOARD MEMBERS AND COMMITTEES

I. STAFF REPORTS

J. ADJOURN

Carbon County Planning Board
April Meeting
4-16-24

- A. Call Meeting to Order, 7:00 pm, Gordy Hill – Chairperson

- B. Roll Call
 - Present: Gordy Hill, Clinton Giesick, Betsy Scanlin, Clint Peterson, Dean Webb, Skip Bratton, Mike Hayes, Angela Kallevig (phone), Marni Echols-Bell (phone), Forrest Mandeville
 - Audience: see attached sign-in sheet

- C. Approval of 3-19-24 Minutes
 - Dean moved to approve. Clint second.
 - Motion passed unanimously

- D. Public Hearings
 - *See Regular Business*

- F. Regular Business
 - *Bridger Tower Corporation – Group 2 Development Permit*
 - Wireless telecommunications tower
 - 3 miles South of Bridger – Schwend Rd.
 - 40x60 area located on an unfarmed former homesite
 - Setbacks for telecommunications towers will be met
 - Existing county road access
 - Lighting will be in place as required by FAA
 - 197 ft from nearest property line
 - 145 ft tall tower plus 5 ft lightning rod
 - 6 ft tall chain link fence will be installed around 40x60 area
 - Multiple carriers other than Verizon will be able to utilize tower
 - Skip Bratton
 - Question if there were any complaints about obstructed views
 - Clint moved to recommend Commissioner’s approval. Angela second.
 - Motion passed unanimously

 - *Carbon County Road & Bridge Group 2 Development Permit*
 - 5,780 sq. ft. salt and sand storage building for road maintenance
 - Located on Rodeo Road south of Carbon County Fairgrounds

- All setback requirements will be met
- Being built on county owned property
- Clint Peterson
 - Proposed building appears to be located on property currently utilized by Carbon County Fairgrounds
 - Will fairground camping spaces be affected?
 - Carbon County Fair grows every year and if anything more camping spaces are needed, not less
- Betsy moved to table until 5-21-24 meeting. Clinton second. This will allow time for site inspection and contacting of Carbon County Fair Board.
 - Motion passed. 7 yes. 1 no.

G. Audience Communication

- *Carbon County Road & Bridge Group 2 Development Permit*
 - Beth Testa
 - Adjacent property owner
 - Concerned about increased semi traffic in area
 - Mark Schubert
 - Neighboring property owner
 - Area is slowly developing, but feels this proposed construction is a change of use
 - Proposed location has barely been used until recently
 - Current road may not be able to accommodate increased semi traffic
 - Increased noise and dust are a concern, along with road safety

H. Written Communication

- None

I. Committee Reports

- *Carbon County Conservation District*
 - Still pursuing fines for unpermitted streambed work performed after June, 2022 flooding

J. Staff Reports

- *See Regular Business*

K. Adjourn Meeting

- 8:30 pm

CARBON COUNTY
Planning Office
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PROJECT MEMORANDUM

TO: Members of the Carbon County Planning Board
FROM: Forrest J. Mandeville, AICP – Contract Planner
DATE: May 10, 2024
RE: Miller Montana Ranch Subdivision Preliminary Plat Application and Variance Request–
Staff Report and Findings

REQUIRED PLANNING BOARD ACTION: Review, receive public comment, and recommendation to approve, conditionally approve, or deny the proposed preliminary plat and variance request.

RECOMMENDATION: **Approval with Conditions**

RECOMMENDED MOTION: *Having reviewed and considered the application materials, project memorandum, public comments and all of the information presented, I hereby move to recommend **approval** of the Miller Montana Ranch Subdivision and variance from road design standards, with the findings and conditions included in the project memorandum.*

Project/Application Summary:

Red Lodge Surveying, on behalf of Miller Montana Ranch, LLC, has submitted a preliminary plat application for a 1-lot subdivision to revoke an agricultural covenant on the property. The property was created using an agricultural covenant exemption; this subdivision will lift the covenant and allow non-agricultural development. The property is 116.29 acres in size. There is an associated variance request to allow a driveway in excess of 1000 feet.

The subject property is located on Selms Road, approximately 6 miles southeast of the intersection with Highway 212 and 8 miles northwest of the Town of Bridger. The property is legally described as Tract 1-AG, COS 2029, lying in the NW ¼ and NE ¼ of Section 4, Township 6 South, Range 22 East, P.M.M., Carbon County, Montana.

Required Planning Board Action:

During a public meeting, the Planning Board shall make a recommendation to the County Commission to approve, conditionally approve, or deny the preliminary plat and variance request. The Planning Board may recommend conditions for approval intended to ensure compliance with the Subdivision Regulations and to mitigate any anticipated impacts of the subdivision.

Subdivision Regulations – Compliance Review/Findings Summary: (Section references are to the Carbon County Subdivision Regulations unless otherwise noted)

a. Relevant evidence relating to the public health, safety, and welfare

The subdivision is proposing individual well and septic systems for two homes on the property, a main house and a caretaker house. The property will need approval from the Carbon County Environmental Health Department.

Access is provided to the subdivision by Selms Road. There is an existing ranch road on the property providing access to property to the south also owned by Miller Montana Ranch, LLC. The preliminary plat shows a 40-foot wide access easement that will be provided for land to the south.

b. Summary of Probable Impacts

Except where exempt by state law, all subdivisions must be reviewed for the specific, documentable, and clearly defined impact on agriculture, agricultural water user facilities, local services, the natural environment, wildlife, wildlife habitat, and public health and safety.

- **Effect on agriculture:** There is no prime farmland, as defined by USDA, on the site. The area is primarily grazing land and large lot residential uses. The Eagle Point Tracts are within a mile and half of the subject property. The property is large enough to allow a certain amount of grazing to continue on the property, but that use will likely cease around the home sites. The covenant restricting use of the property to agriculture will be revoked as part of subdivision review.

The subject property is fenced, but staff understands that there are open range cattle in the area. It is typically the responsibility of a landowner to fence cattle out of their property. Unless cattle are fenced out, conflicts can arise. If fences are adequately maintained, gates are closed, and/or cattle guards are utilized, these possible conflicts can be minimized. The subject property is fenced and gated. Requiring a cattle guard at the approach is an appropriate way to ensure this potential impact is mitigated. Design standards for cattle guards are outlined in the Subdivision Regulations, Section V, Table 1, and are required to be the same width as the driving surface, in this case, 16-feet.

Due to the small scale of residential development proposed as part of this subdivision, as long as a cattle guard is provided at the approach from Selms Road, there should be little impacts to agriculture as a result of this subdivision, other than what may have already occurred as a result of other area development.

Finding: The subdivision will remove some property from agricultural production, but because of the scale of the subdivision and the proximity to residential subdivisions, there should be minimal adverse impacts on agriculture as a result of this subdivision if a cattle guard is installed at the approach to Selms Road.

- **Effect on agricultural water user facilities:** There are no irrigation ditches on the property. There are no known water rights associated with this property, though Miller Montana Ranch does have water rights associated with other properties in the area.

No additional water rights for Lot 1 are expected to be required by the Montana Department of Natural Resources and Conservation (DNRC) as a result of this subdivision.

Finding: Because there are no agricultural water user facilities on the property, the subdivision is not expected to have significant adverse impacts on such facilities.

- Effect on local services: The subdivision falls with the Carbon County Sheriff's Office jurisdiction for law enforcement. Response times vary due to location of deputies at time of call.

The Bridger Fire Department provides fire protection in the area. The application indicates that in a conversation, Fire Chief Steve Fendler requested a circle drive at the main house location for ease of fire protection access. The preliminary plat also indicates turnarounds will be provided on the driveway about 912 feet from Selms Road and at the south end of Lot 1 where the driveway turns toward the main house.

Selms Road is a County-owned and maintained gravel road.

Beartooth Electric Cooperative provides electrical services in the area and reports the ability to serve the subdivision through underground power lines. The locations of the proposed power lines are shown on the preliminary plat. Easements through adjacent property will need to be obtained, as shown on the plat.

Utility easements should be shown on the final plat per section V-A-15.a., and the standard utility language should be placed on the final plat, per section V-A-15.h. of the Subdivision Regulations: "The undersigned hereby grants unto each and every person, firm or corporation, whether public or private, providing or offering to provide telephone, telegraph, electric, power, gas, cable television, water or sewer service to the public, the right to the joint use of an easement for the construction, maintenance, repair and removal of the lines and other facilities, in, over, under and across each area designated on this plat as "Utility Easement" to have and hold forever."

Finding: There will be no significant adverse impacts on local services turnarounds on the driveway are provided as indicated in the preliminary plat plans and as requested by the Bridger Fire Chief, and if utility easements are obtained and shown on the plat, and the standard utility easement language is provided.

- Effect on the natural environment: New septic/drainfield systems are proposed for the property. Individual wells will serve new residences.

Review and approval of new septic, well, solid waste, and stormwater drainage is required by the Carbon County Sanitarian. (See Sections IV-B-8.b, V-A-11 through 14, and MCA 76-3-622).

Area well logs indicate depths of over 450 feet with static water levels in the 300-foot area. The size of the lot will provide a lot of distance between other wells in the area. The

acquisition of a new water right for the subdivision is not typically required unless the subdivision will use 10 acre-feet of water per year, or if a well will pump more than 35 gallons per minute.

Finding: New water, wastewater, stormwater drainage, and solid waste disposal will not have an adverse impact on the natural environment if County Sanitarian review and approval is required to be obtained prior to final plat.

The applicant submitted a Weed Inspection Report completed by Carbon County Weed District Coordinator Brian Ostwald dated November 14, 2023. The report indicates no weeds were present, but that additional inspection would be done in the spring. Email correspondence with Weed District Coordinator Brian Ostwald on April 18 indicated that he was waiting for things to green up before checking again, and that he would be in contact with planning staff if anything changed.

Finding: There should be minimal impacts on the natural environment due to the proliferation of noxious weeds since there were no weeds observed within the project area.

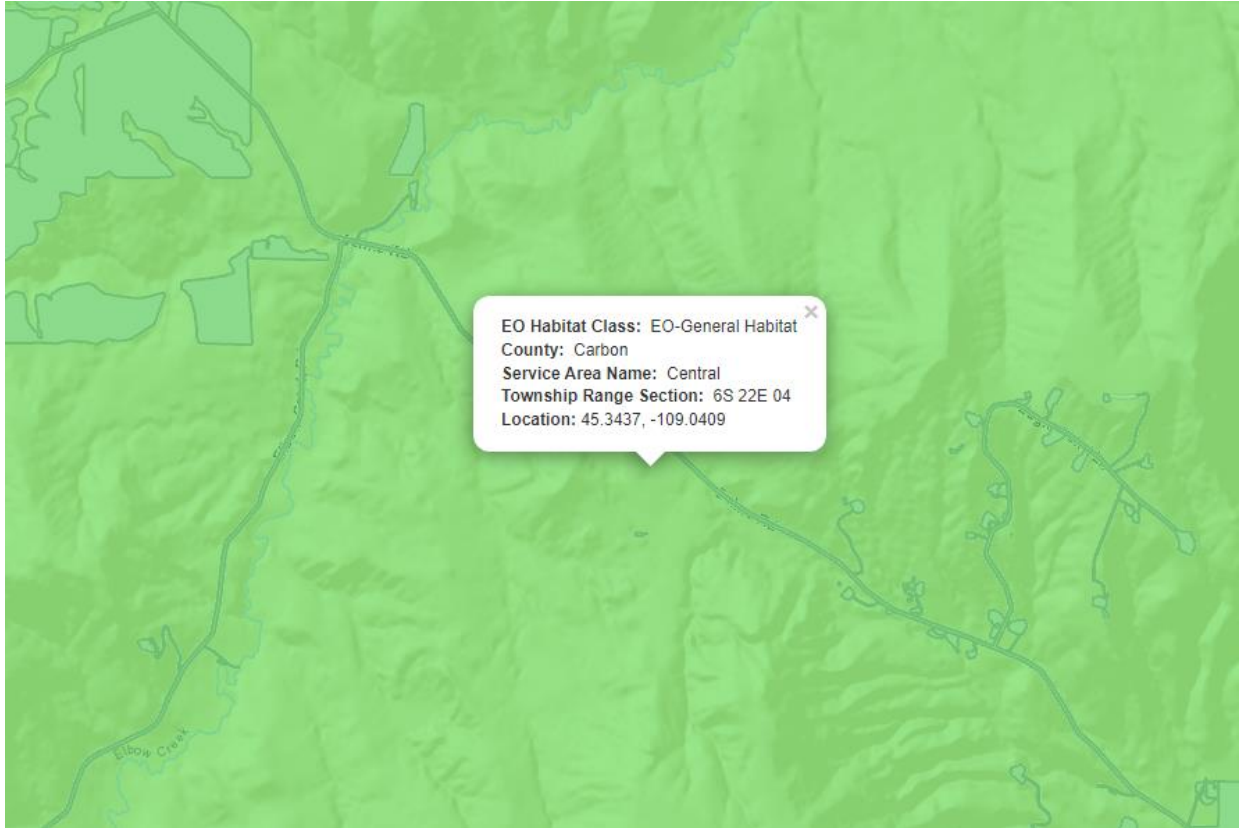
- Effect on wildlife: Wildlife does frequent the area. However, since the project is in close proximity to existing similar development, and fairly small in scale, no significant adverse impacts on wildlife is anticipated other than what may have already occurred.

Finding: No significant adverse impacts to wildlife is anticipated due to the proximity of existing similar development and the small scale of the subdivision.

- Effect on wildlife habitat: The subdivision is within Sage Grouse general habitat according to the Montana Sage Grouse Habitat Conservation Program. The application included comments from the Program indicating the subdivision was not within two miles of an active lek and no mitigation was required by the Program.



Sage Grouse



Sage Grouse Habitat in Subdivision Area

There has been no other critical wildlife habitat identified on the site, though there is certainly other wildlife in the area, including deer, elk, birds, etc.

Finding: There should be no significant impact on wildlife habitat as there is no critical wildlife habitat on the site.

Effect on public health and safety: The Carbon County Sheriff's office provides law enforcement service in the area; the Bridger Fire Department provides fire protection in the area. See discussion and findings under Effect on Local Services.

County Sanitarian approval of well and septic provisions is required. See discussion under effects on the natural environment.

The driveway to the proposed residence is over 1000 feet long, the maximum allowed in the Subdivision Regulations (Section V, Table 1). A variance has been requested to allow a longer driveway with pullouts at least every 1000 feet.

Finding: There should be minimal impacts on public health and safety if recommended conditions are imposed.

c. Whether the application and plat conform to the provisions of the following:

- i. The Montana Subdivision and Platting Act: The Plat has been prepared and processed in accordance with the Montana Subdivision and Platting Act (MSPA). The final plat should include a notation that each lot has legal and physical access (76-3-608(3)(d), MCA, and Section IV-B-10.f.v of the Carbon County Subdivision Regulations). There is an agricultural covenant on the property and approval of this subdivision will revoke the covenant (76-3-211, MCA, and Section IX-K). A document signed by the County Commissioners revoking the covenant should be filed with the plat.

Finding: Upon compliance with the recommended conditions of approval and adherence to the process outlined in statute, the subdivision will have complied with the MSPA. A document revoking the agricultural covenant should be filed with the plat.

- ii. Compliance with Survey Requirements: The final plat must be in compliance with the requirements of Title 76, Chapter 3, Part 4, MCA, as well as Uniform Standards for Final Subdivision Plats (24.183.1107, ARM). A requirement that, prior to filing, the plat be submitted to the County's Examining Land Surveyor (ELS), and that any comments of the ELS be addressed will ensure survey requirements are followed (Section IV-C-3.b.vi of the Carbon County Subdivision Regulations).

Finding: Upon review by the ELS and the addressing of any comments thereof, survey requirements will have been adhered to.

- iii. The Carbon County Subdivision Regulations: The subdivision, once conditions have been met, will conform to the requirements of the adopted Subdivision Regulations.

The final plat must be substantially similar to the preliminary plat application, except as modified by conditions. If the final plat differs substantially from the preliminary plat, additional review may be required (Section IV-C-5.b of the Carbon County Subdivision Regulations).

The Carbon County Subdivision Regulations, Section IV-B-11 states that a preliminary plat approval is in force for two years. If a final plat is not filed within that timeframe, an extension must be granted or a new application submitted. The County is under no obligation to grant such an extension.

A condition requiring final plat preparation to be in conformance with the Subdivision Regulations will ensure compliance with County requirements, even if not specifically discussed in this memorandum.

Finding: To ensure compliance with the Subdivision Regulations, conditions should be required to ensure the final plat is substantially similar to the preliminary plat and plans, that the final plat is filed within two years of preliminary plat approval, and that the final plat be submitted in conformance with the Subdivision Regulations.

- iv. Applicable Zoning Regulations: The Carbon County Development Regulations require a Group 1 Development Permit be obtained prior to residential development.

Finding: The subdivision is in compliance with the Development Regulations as far as applicable. Development permits will need to be obtained prior to development.

- v. Other regulations in effect in the area of the proposed subdivision: There are no other known regulations in effect for the area with which the subdivision would conflict.

Finding: The subdivision is not in conflict with any known regulations.

- vi. Whether DEQ has approved the subdivision for proposed subdivisions that will create parcels of less than twenty (20) acres: There are no proposed lot of less than 20 acres.

Finding: DEQ review and approval is not required.

- vii. Whether the subdivider has demonstrated that there is an adequate water source and at least one are for a septic system and a replacement drainfield for each lot for a proposed subdivision that will create one or more parcels containing twenty (20) acres or more:

The proposed lot is greater than 20 acres, therefore approval from the Carbon County Sanitarian is required (Sections IV-B-8.b.ii and V-A-11, 12, 13, and 14 of the Carbon County Subdivision Regulations). Proposed water and wastewater systems were submitted with the preliminary plat application.

Finding: Carbon County Sanitarian review and approval of the subdivision should be a condition of final plat approval.

d. Compliance with Growth Policy:

State law, 76-1-605, MCA, requires that after the adoption of a growth policy, the governing body must be “guided by and give consideration to the general policy and pattern of development set out in the growth policy” in the “authorization, construction, alteration, or abandonment of public ways, public places, public structures, or public utilities; authorization, acceptance, or construction of water mains, sewers, connections, facilities, or utilities; and adoption of zoning ordinances or resolutions.” However, statute also states that “A growth policy is not a regulatory document and does not confer any authority to regulate that is not otherwise specifically authorized by law or regulations adopted pursuant to the law. A governing body may not withhold, deny, or impose conditions on any land use approval or other authority to act based solely on compliance with a growth policy [...]” It is, though, beneficial to examine the proposed subdivision in consideration of the adopted growth policy.

Carbon County adopted the 2020 Growth Policy in March of 2020. Chapter 6 contains goals and objectives for the implementation of the Growth Policy. The following goals and objectives may be relevant to the proposed subdivision:

- Objective 1.3: Assist farmers and ranchers who wish to continue using their lands for agricultural production.

- 1.3.C. Continue to fund and support an active County weed control program which includes both education and regulation. Streamline the process to treat noxious weeds and recover costs when landowners do not treat their weeds. Continue to require weed inspections and bonding as necessary for any land use change and new development with fees to cover staff time for inspections.
- 1.3.E. Balance individual property rights with the rights of other property owners and community interests for the public health, safety and welfare of all citizens.
- Objective 1.4: Encourage development in areas that are not in agricultural production
 - 1.4.A. As authorized by the state legislature in 2003, in 76-3-509 MCA, formulate and adopt regulations to encourage cluster development for those developments that meet the definitions.
- Objective 1.7: Direct growth to existing communities, incorporated towns and cities, or platted unincorporated places.
 - 1.7.A. Explore the potential for future land use mapping in areas immediately adjacent to existing communities
 - 1.7.B. Discourage development within the wildland-urban interface.

e. Variance Request:

The variance request is to allow a relaxation in road design standards. Section V-A-10 of the Subdivision Regulations prohibit dead-end roads and a require a turnaround; Table 1 requires private driveways be no longer than 1000 feet in length. The variance request is to allow a driveway of approximately 2,787 feet from Selms Road to the main house and proposes turnarounds along the driveway.

Reasonable variances may be granted from the design and improvement standards of the Subdivision Regulations where it is found that strict compliance with the specific standard would result in undue hardship and strict compliance is not essential to the public health, safety, and welfare. Pursuant to Section VIII-B.c., a variance shall be based upon specific variance criteria, and may not have the effect of nullifying the purpose of these Regulations. Variances may not be approved without findings based upon the evidence presented in each specific case that:

- i. The granting of the variance will not be detrimental to the public health, safety, or general welfare or injurious to other adjoining properties. The minimum requirement for a maximum driveway length is directly related to findings that emergency services need to access the residences and have adequate means to turnaround. The applicant intends to mitigate risks associated with the long driveway by installing turnarounds between Selms Road and the Caretaker house and where the driveway turns toward the main house. An existing agricultural drive is in place providing access to agricultural lands to the south also owned by the developer.

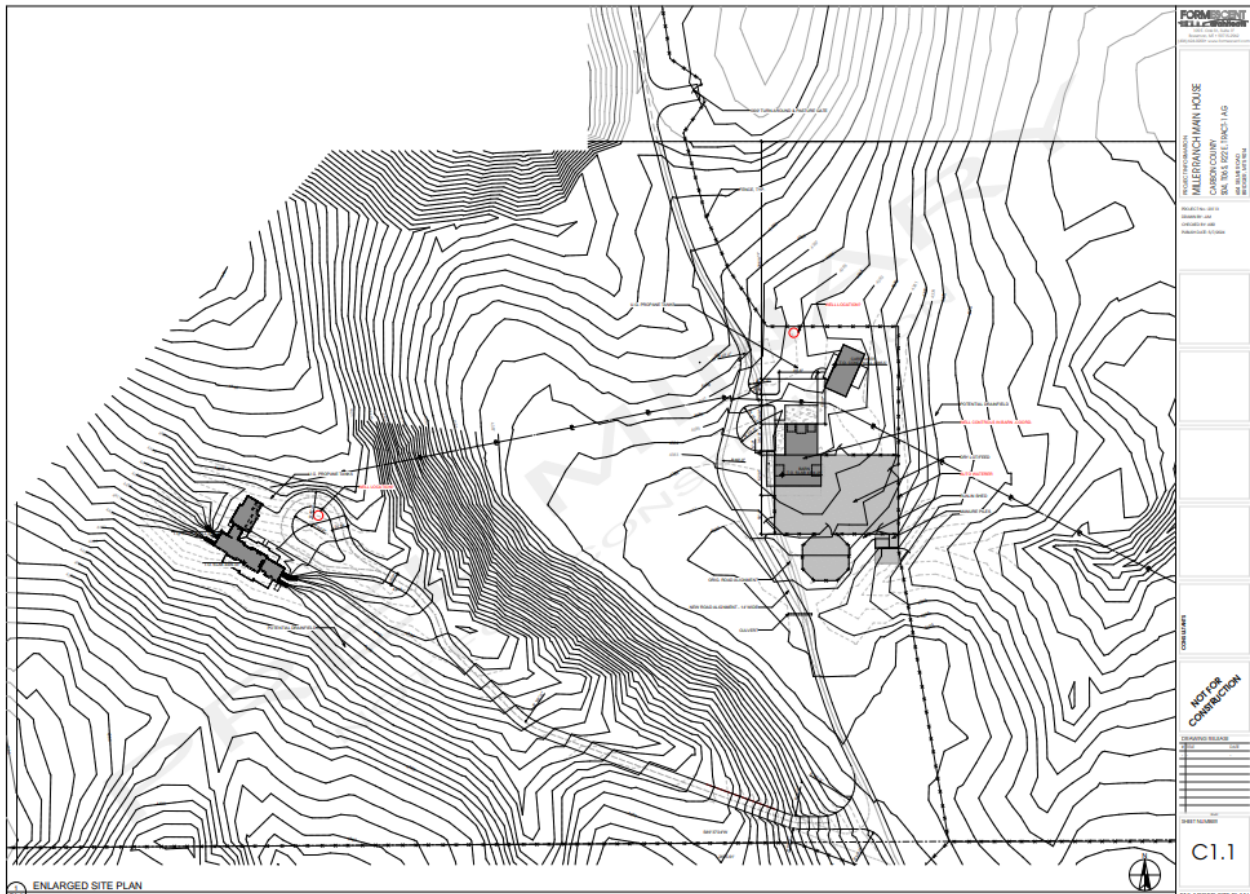
Bridger Fire Chief Steve Fendler requested a turnaround be provided at the main house as well.

Requiring the turnarounds be constructed prior to final plat will ensure that adequate turnaround are in place.

- ii. Due to the physical surroundings, shape, or topographical conditions of the property involved, strict compliance with the regulations will impose an undue hardship on the owner. Undue hardship does not include personal or financial hardship, or any hardship that is self-imposed. The variance request indicates the driveway length is due to the best homesites being in areas with unobstructed views and to be higher in elevation to avoid potential drainage issues.

The topography of the site is not self-imposed and the request is not for financial reasons.

- iii. The variance will not cause a substantial increase in public costs. If this variance is granted it should not substantially increase any public costs.
- iv. The variance will not place the subdivision in nonconformance with any adopted zoning regulations. Carbon County has no zoning regulations with which this variance would not conform if granted. The Development Regulations would still be in force.



Site Plan Closeup Showing Turnarounds, Caretaker House, and Main House

f. Planning Staff Recommendation:

The basis for the governing body's decision to approve, conditionally approve, or deny a proposed subdivision is whether the subdivision application, preliminary plat, applicable environmental assessment, public hearing, planning board recommendations, or additional information demonstrates that development of the proposed subdivision is in compliance with the Montana Subdivision and Platting Act and the adopted Subdivision Regulations.

In consideration of the findings included in this Memorandum, Planning Staff recommends approval of the Miller Montana Ranch Subdivision, pursuant to the following conditions (Section references are to the Carbon County Subdivision Regulations unless otherwise noted):

1. A cattle guard shall be in place at the approach to Selms Road that meets the requirements of the Subdivision Regulations. (Section V-A-10.c. and Table 1; Effect on Agriculture)
2. Filing of the final plat shall be subject to the review and approval by the Carbon County Sanitarian for water, wastewater, solid waste, and stormwater drainage provisions. (Sections IV-B-8.b.ii and V-A-11, 12, 13, and 14; Effect on the Natural Environment; Effect on Public Health and Safety)
3. The final plat shall show the location of all existing and required utility easements. (Section V-A-15.a; Effect on Local Services)
4. Easements for utility access to the site shall be obtained prior to final plat. (Section V-A-15; Effect on Local Services).
5. The final plat must include the following statement: "The undersigned hereby grants unto each and every person, firm or corporation, whether public or private, providing or offering to provide telephone, telegraph, electric, power, gas, cable television, water or sewer service to the public, the right to the joint use of an easement for the construction, maintenance, repair and removal of the lines and other facilities, in, over, under and across each area designated on this plat as "Utility Easement" to have and hold forever." (Section V-A-15.h; Effect on Local Services)
6. Prior to final plat, the turnarounds as shown on the preliminary plat shall be constructed to the standards required in the Subdivision Regulations and the construction shall be certified by a registered professional engineer. (Section V-A-10.c. and Table 1)
7. A notation shall be provided on the final plat that legal and physical access is provided per 76-3-608(3)(d), MCA. (Section IV-B-11.g.v; Compliance with the Montana Subdivision and Platting Act)
8. A document revoking the agricultural covenant on the property shall be filed with the final plat. (Section IX-K; Compliance with the Montana Subdivision and Platting Act)
9. Prior to filing the final plat, the plat shall be submitted to the County Examining Land Surveyor and any comments sufficiently addressed. (Section IV-C-3.b.vi; Compliance with Survey Requirements)
10. The final plat shall be in substantial compliance with the plans and documents submitted as part of the preliminary plat application. (Section IV-C-5.b; Compliance with the Subdivision Regulations)

11. The final plat shall be submitted within two years of the date of preliminary plat approval, or an extension(s) to the approval period obtained. (Section IV-B-11; Compliance with the Subdivision Regulations)
12. The final plat shall be prepared and reviewed in accordance with Section IV-C of the Carbon County Subdivision Regulations. (Compliance with the Subdivision Regulations)

CARBON COUNTY
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PROJECT MEMORANDUM

TO: Members of the Carbon County Planning Board

FROM: Forrest J. Mandeville, AICP – Contract Planner

DATE: May 10, 2024

RE: Hellroaring Ranch Subdivision Preliminary Plat Application–Staff Report and Findings

REQUIRED PLANNING BOARD ACTION: Review, receive public comment, and recommendation to approve, conditionally approve, or deny the proposed preliminary plat.

RECOMMENDATION: **Approval with Conditions**

RECOMMENDED MOTION: *Having reviewed and considered the application materials, project memorandum, public comments and all of the information presented, I hereby move to recommend **approval** of the Hellroaring Ranch Subdivision, with the findings and conditions included in the project memorandum.*

Project/Application Summary:

Red Lodge Surveying, on behalf of Charles Joseph Spencer and Macy Quinn Spencer, has submitted a preliminary plat application for a 2-lot minor subdivision. The subdivision area is approximately 13 acres; proposed lots are 11.02 and 1.98 acres in size. Engineering West is the engineer on the project.

The subject property is located on Two Mile Bridge Road, approximately one mile north of the intersection with Clear Creek School Road, and three miles from the intersection with Highway 212. The property is legally described as Tract 2 of COS 1388 FT, lying in the NW4 of Section 2, Township 7 South, Range 20 East, P.M.M., Carbon County, Montana.

Required Planning Board Action:

During a public meeting, the Planning Board shall make a recommendation to the County Commission to approve, conditionally approve, or deny the preliminary plat. The Planning Board may recommend conditions for approval intended to ensure compliance with the Subdivision Regulations and to mitigate any anticipated impacts of the subdivision.

Subdivision Regulations – Compliance Review/Findings Summary: (Section references are to the Carbon County Subdivision Regulations unless otherwise noted)

a. Relevant evidence relating to the public health, safety, and welfare

Each lot is proposed to utilize individual drainfields located on the lot it serves. Lot 1 is proposed to utilize a cistern and Lot 2 is proposed to utilize an existing well for potable water supply. Both lots are subject to review through the Montana Department of Environmental Quality (DEQ), though the well and drainfield for Lot 2 were previously reviewed and approved by DEQ (E.Q. #23-1377).

Access is proposed to be provided to the subdivision by a shared approach from Two Mile Bridge Road. There is an existing approach in the location. The approach and access will be located on Lot 2; Lot 1 will have an easement for access and utilities.

Private covenants are proposed to establish additional restrictions on the subdivision, including a prohibition on re-subdivision into lots of less than 2 acres.

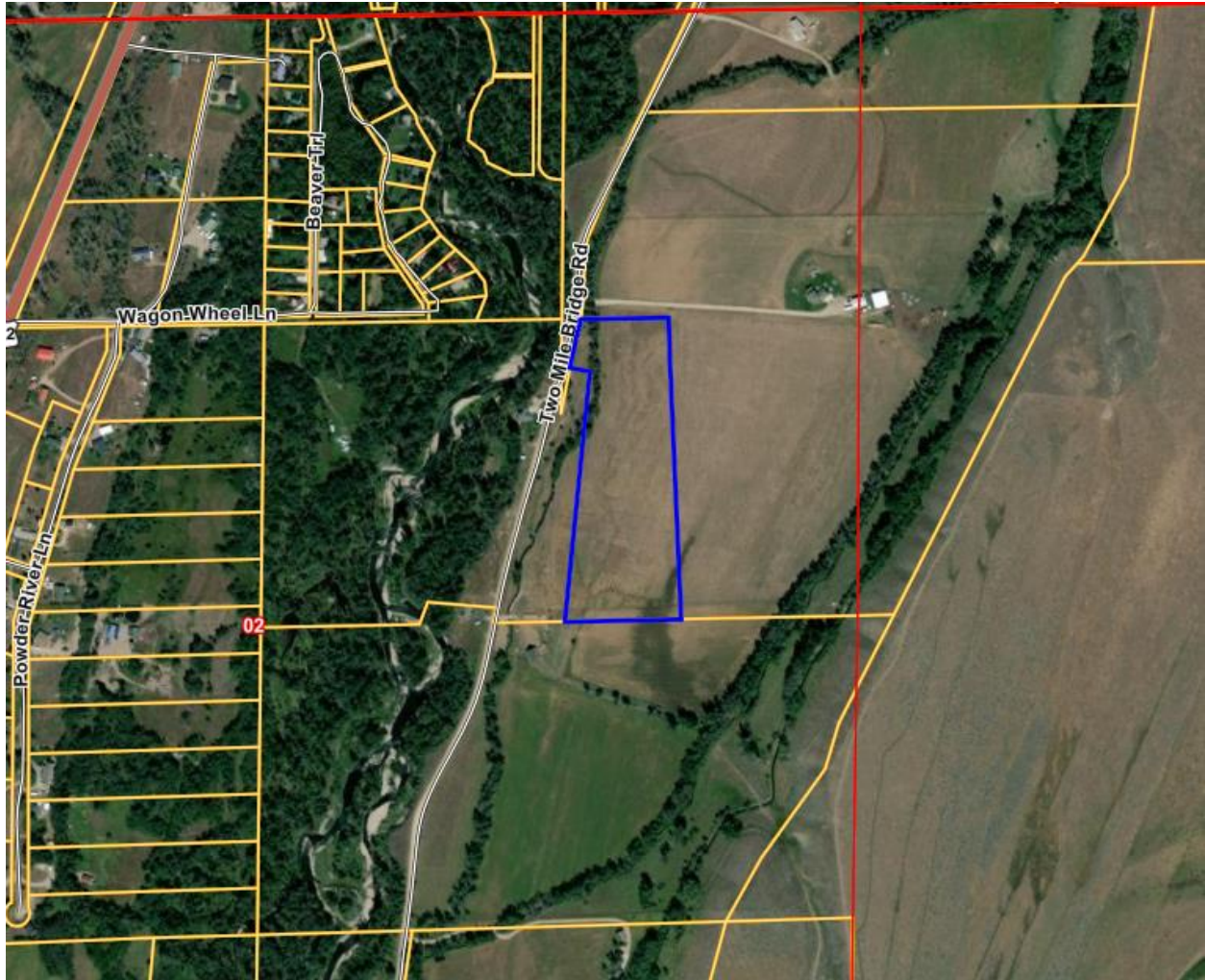
b. Summary of Probable Impacts

Except where exempt by state law, all subdivisions must be reviewed for the specific, documentable, and clearly defined impact on agriculture, agricultural water user facilities, local services, the natural environment, wildlife, wildlife habitat, and public health and safety.

- Effect on agriculture: The site is classified by the USDA as farmland of statewide importance. The property appears to have been used as hay and grazing land recently. This use would likely cease as a result of the subdivision and subsequent residential development. The covenants submitted with the preliminary plat application indicate pig farms would not be allowed, nor would more than 24 chickens be allowed. Lot 2 is big enough to allow a small degree of agricultural uses if desired by future owners.

The property is in an area of large-lot residential and agricultural lands. There are agricultural uses to the south and east and north. Land to the west is the remaining parcel from when this tract was created by family transfer three years ago and appears to still be owned by the applicants of the family transfer.

Finding: The subdivision will remove some property from agricultural production, but because the subdivision is in close proximity to similar uses, there should be minimal adverse impacts on agriculture as a result of this subdivision.



Subdivision (Blue) and Vicinity

- Effect on agricultural water user facilities: The Clear Creek Ditch runs along the west side of the subdivision and a 20-foot-wide easement is shown on the preliminary plat. The Subdivision Regulations, Section V-A-18 requires the following statement appear on the final plat: “Nothing herein nor any covenant shall diminish the unobstructed use and maintenance of the existing water delivery ditches, pipelines, and facilities in the subdivision that are necessary to convey water through the subdivision to land adjacent or to beyond the subdivision in quantities and in a manner that are consistent with historic and legal rights.”

There is an existing ground water right for Lot 2 for domestic use.

The shared approach will cross Clear Creek Ditch. There is an existing culvert in place.

Finding: As long as an easement for Clear Creek Ditch is provided on the plat, and the required language appears on the plat, and water rights are respected, there should be

minimal adverse impacts on agricultural water user facilities as a result of this subdivision.

- Effect on local services: The Carbon County Sherriff's office will provide law enforcement services to the subdivision. According to documents provided in the subdivision application, Sheriff Josh McQuillan reports the ability to serve the area with existing personnel and equipment with a response time of 15-20 minutes.

Finding: This subdivision will have minimal adverse impacts on law enforcement, since services can be provided.

The Red Lodge Fire Department provides fire protection in the area. Deputy Fire Chief Tim Ryan notes that due to the density of the subdivision, one of the lots being less than 3 acres, it does fall into the "high risk" category. Deputy Chief Ryan requested the Fire Control and Prevention Plan require fire resistant building materials. The submitted Fire Control and Prevention Plan does contain a requirement that Lot 1, which is under three acres, contain only buildings constructed of fire-resistant materials.

Finding: This subdivision will have minimal adverse impacts on fire protection in the area if a Fire Control and Prevention Plan is in place requiring the use of fire-resistant material in buildings. The Fire Control and Prevention Plan should be filed with the final plat.

The shared approach and driveway is required to meet the requirements of the Subdivision Regulations for multi-residence road design, which requires a 22-foot wide driving surface in a 60-foot wide easement. A 45-foot radius cul-de-sac is proposed for the end of the driveway, near the homesite on Lot 2.

Two Mile Bridge Road is a gravel-surfaced road owned and maintained by the County. Two Mile Bridge Road has regularly scheduled maintenance and snowplowing according to the Road Priority Map on the Road and Bridge Department website. Additional traffic may result in more requests for maintenance and more complaints regarding dust control. The County has a process in which landowners can apply to the County to coordinate spraying for dust control.

As more lots develop on gravel County roads, impacts will increase through demands for a higher level of maintenance. The County may eventually need to seriously consider requiring RSIDs for road maintenance, the adoption of impact fees, or other mitigation measures to address these cumulative impacts.

Finding: Impacts on the road system can be mitigated by requiring the shared driveway and cul-de-sac be constructed to the standards required in the Subdivision Regulations and the construction certified by a registered professional engineer. (Section V-A-10.c. and Table 1)

Beartooth Electric Cooperative provides electrical services in the area and reports the ability to serve the subdivision. Utility easements should be shown on the final plat per

section V-A-15.a., and the standard utility language should be placed on the final plat, per section V-A-15.h. of the Subdivision Regulations: “The undersigned hereby grants unto each and every person, firm or corporation, whether public or private, providing or offering to provide telephone, telegraph, electric, power, gas, cable television, water or sewer service to the public, the right to the joint use of an easement for the construction, maintenance, repair and removal of the lines and other facilities, in, over, under and across each area designated on this plat as “Utility Easement” to have and hold forever.”

Finding: There will be no significant adverse impacts on utility providers if utility easements are shown on the plat and the standard utility easement language is provided.

Documents submitted with the preliminary plat application estimate that the subdivision could generate an additional 1-5 children in the Red Lodge School District, and that the subdivision is on an existing bus route. Of course, individual circumstances of future lot owners could impact these estimates. A subdivision may not be denied based solely on impacts on educational services (76-3-608(1), MCA).

Finding: Hellroaring Ranch Subdivision should have minimal impacts on area schools due to the relatively small size of the subdivision.

- Effect on the natural environment: New septic/drainfield systems are proposed for each lot. An existing well will serve Lot 2 and a cistern will be used for potable water supply for Lot 1.

Review and approval of new septic, well, solid waste, and stormwater drainage is required by the Montana Department of Environmental Quality (DEQ) and the Carbon County Sanitarian, as appropriate. (See Sections IV-B-8.b, V-A-11 through 14, and MCA 76-3-622). Facilities on Lot 2 have been reviewed and approved by DEQ (E.Q.#23-1377).

Finding: New water, wastewater, stormwater drainage, and solid waste disposal will not have an adverse impact on the natural environment if DEQ and County Sanitarian review and approval is required to be obtained prior to final plat.

A recent order from the Montana First Judicial District Court regarding a proposed subdivision in Broadwater County suggests that counties should require subdividers provide as much detail as possible on the impacts of a proposed subdivision on the potentially affected aquifer and should not simply rely on the Montana Department of Natural Resources and Conservation’s (DNRC) water right predetermination process. The Court also found errors with the DNRC process, which may result in only a single exempt well being allowed in each subdivision, regardless of water use of the whole subdivision.

The acquisition of a new water right for a subdivision is not typically required unless the combined subdivision lots will use 10 acre-feet of water per year, or if a well will pump more than 35 gallons per minute. The subdivision application indicates there is an existing domestic well and associated water rights on Lot 2. Lot 1 will utilize a cistern.

If existing water rights are interfered with either as part of a subdivision or otherwise, DNRC has an adjudication process that can result in later appropriations being limited to protect senior water right holders.

Finding: There should be minimal impacts on the aquifer since only one well will be utilized, which is existing has and has a water right for domestic use.

The applicant submitted a Weed Inspection Report completed by Carbon County Weed District Coordinator Brian Ostwald dated September 11, 2023. The report indicates hoary alyssum, houndstongue, Canada thistle, and spotted knapweed were present. The report noted that the hay ground was clean and the weeds were present where ground had been disturbed to run power to the site. Treatment will be needed after more ground is disturbed. No weed bond was required.

Finding: There should be minimal impacts on the natural environment due to the proliferation of noxious weeds since there were few weeds within the project area and there are mechanisms to ensure future owners address weed proliferation if it were to occur in the future.

- Effect on wildlife: Wildlife does frequent the area. However, since the project is in close proximity to existing similar development, no significant adverse impacts on wildlife is anticipated other than what may have already occurred.

Finding: No significant adverse impacts to wildlife is anticipated due to the proximity of existing similar development.

- Effect on wildlife habitat: The subdivision is within General Sage Grouse Habitat according to the Montana Sage Grouse Habitat Conservation Program. Comments from the Program submitted with the application indicate mitigation will be in the form of a contribution to the Stewardship Account in the amount of \$261.97. The Program also required mitigation of noxious weeds on the property.

There does not appear to be other critical wildlife habitat on the site.

Finding: There should be no significant impact on wildlife habitat if mitigation through the Montan Sage Grouse Habitat Conservation Program is completed and noxious weeds are kept from proliferating on the property.

- Effect on public health and safety: The Carbon County Sheriff's office provides law enforcement service in the area; the Red Lodge Fire Department provides fire protection in the area. See discussion and findings under Effect on Local Services.

DEQ and County Sanitarian approval of well and septic provisions is required. See discussion under effects on the natural environment.

Finding: There should be minimal impacts on public health and safety if recommended conditions are imposed.



Sage Grouse Habitatat Subdivision Location

c. Whether the application and plat conform to the provisions of the following:

- i. The Montana Subdivision and Platting Act: The Plat has been prepared and processed in accordance with the Montana Subdivision and Platting Act (MSPA). The final plat should include a notation that each lot has legal and physical access (76-3-608(3)(d), MCA, and Section IV-B-10.f.v of the Carbon County Subdivision Regulations).

Finding: Upon compliance with the recommended conditions of approval and adherence to the process outlined in statute, the subdivision will have complied with the MSPA.

- ii. Compliance with Survey Requirements: The final plat must be in compliance with the requirements of Title 76, Chapter 3, Part 4, MCA, as well as Uniform Standards for Final Subdivision Plats (24.183.1107, ARM). A requirement that, prior to filing, the plat be submitted to the County’s Examining Land Surveyor (ELS), and that any comments of the ELS be addressed will ensure survey requirements are followed (Section IV-C-3.b.vi of the Carbon County Subdivision Regulations).

Finding: Upon review by the ELS and the addressing of any comments thereof, survey requirements will have been adhered to.

- iii. The Carbon County Subdivision Regulations: The subdivision, once conditions have been met, will conform to the requirements of the adopted Subdivision Regulations.

The final plat must be substantially similar to the preliminary plat application, except as modified by conditions. If the final plat differs substantially from the preliminary plat,

additional review may be required (Section IV-C-5.b of the Carbon County Subdivision Regulations).

The Carbon County Subdivision Regulations, Section IV-B-11 states that a preliminary plat approval is in force for two years. If a final plat is not filed within that timeframe, an extension must be granted or a new application submitted. The County is under no obligation to grant such an extension.

Private covenants are proposed for the subdivision. Though the County does not enforce such covenants, there are standards with which covenants must comply that are outlined in the Subdivision Regulations, Section V-A-23.

The Subdivision Guarantee indicates a Deed of Trust is in place on the property through the Bank of Bridger. The application included a consent to the subdivision signed by Lance Frank of the Bank of Bridger.

A condition requiring final plat preparation to be in conformance with the Subdivision Regulations will ensure compliance with County requirements, even if not specifically discussed in this memorandum.

Finding: To ensure compliance with the Subdivision Regulations, conditions should be required to ensure the final plat is substantially similar to the preliminary plat and plans, that the final plat is filed within two years of preliminary plat approval, that private covenants are compliant with the standards outline din the Subdivision Regulations, and that the final plat be submitted in conformance with the Subdivision Regulations.

- iv. Applicable Zoning Regulations: The Carbon County Development Regulations require a Group 1 Development Permit be obtained prior to residential development.

Finding: The subdivision is in compliance with the Development Regulations as far as applicable. Development permits will need to be obtained prior to development.

- v. Other regulations in effect in the area of the proposed subdivision: There are no other known regulations in effect for the area with which the subdivision would conflict. Private covenants are proposed and should be prepared per the requirements in the Subdivision Regulations and filed with the subdivision.

Finding: The subdivision is not in conflict with any known regulations. Private covenants should meet the requirements of Section V-A-23 and be filed with the final plat.

- vi. Whether DEQ has approved the subdivision for proposed subdivisions that will create parcels of less than twenty (20) acres: DEQ approval is required prior to final plat, as both lots are under 20 acres. (Sections IV-B-8.b.i and V-A-11, 12,13, and 14 of the Carbon County Subdivision Regulations).

Finding: DEQ review and approval of the subdivision should be a condition of final plat approval.

- vii. Whether the subdivider has demonstrated that there is an adequate water source and at least one are for a septic system and a replacement drainfield for each lot for a proposed subdivision that will create one or more parcels containing twenty (20) acres or more:

There are no lots over 20 acres.

d. Compliance with Growth Policy:

State law, 76-1-605, MCA, requires that after the adoption of a growth policy, the governing body must be “guided by and give consideration to the general policy and pattern of development set out in the growth policy” in the “authorization, construction, alteration, or abandonment of public ways, public places, public structures, or public utilities; authorization, acceptance, or construction of water mains, sewers, connections, facilities, or utilities; and adoption of zoning ordinances or resolutions.” However, statute also states that “A growth policy is not a regulatory document and does not confer any authority to regulate that is not otherwise specifically authorized by law or regulations adopted pursuant to the law. A governing body may not withhold, deny, or impose conditions on any land use approval or other authority to act based solely on compliance with a growth policy [...]” It is, though, beneficial to examine the proposed subdivision in consideration of the adopted growth policy.

Carbon County adopted the 2020 Growth Policy in March of 2020. Chapter 6 contains goals and objectives for the implementation of the Growth Policy. The following goals and objectives may be relevant to the proposed subdivision:

- Objective 1.3: Assist farmers and ranchers who wish to continue using their lands for agricultural production.
 - 1.3.C. Continue to fund and support an active County weed control program which includes both education and regulation. Streamline the process to treat noxious weeds and recover costs when landowners do not treat their weeds. Continue to require weed inspections and bonding as necessary for any land use change and new development with fees to cover staff time for inspections.
 - 1.3.E. Balance individual property rights with the rights of other property owners and community interests for the public health, safety and welfare of all citizens.
- Objective 1.4: Encourage development in areas that are not in agricultural production
 - 1.4.A. As authorized by the state legislature in 2003, in 76-3-509 MCA, formulate and adopt regulations to encourage cluster development for those developments that meet the definitions.
- Objective 1.6: Encourage the voluntary preservation of open space and wildlife habitat in the county
 - 1.6.C. Encourage developers to mitigate impacts to wildlife, recreation areas, and agriculture, including, but not limited to, closing water storage tanks and pits, cleaning spills, and keeping major migration corridors as open as possible.
 - 1.6.D. When considering changes in land use, encourage consultation with wildlife agencies for potential impacts.
- Objective 1.7: Direct growth to existing communities, incorporated towns and cities, or platted unincorporated places.

- 1.7.A. Explore the potential for future land use mapping in areas immediately adjacent to existing communities

e. Planning Staff Recommendation:

The basis for the governing body's decision to approve, conditionally approve, or deny a proposed subdivision is whether the subdivision application, preliminary plat, applicable environmental assessment, public hearing, planning board recommendations, or additional information demonstrates that development of the proposed subdivision is in compliance with the Montana Subdivision and Platting Act and the adopted Subdivision Regulations.

In consideration of the findings included in this Memorandum, Planning Staff recommends approval of the Hellroaring Ranch Subdivision, pursuant to the following conditions (Section references are to the Carbon County Subdivision Regulations unless otherwise noted):

1. Easements shall be provided and shown on the final plat for the Clear Creek Ditch to allow for the use, maintenance, and inspection of the facilities. (Section V-A-18; Effect on Agricultural Water Users Facilities)
2. The following statement shall appear on the final plat: “Nothing herein nor any covenant shall diminish the unobstructed use and maintenance of the existing water delivery ditches, pipelines, and facilities in the subdivision that are necessary to convey water through the subdivision to land adjacent or to beyond the subdivision in quantities and in a manner that are consistent with historic and legal rights.” (Section V-A-18; Effect on Agricultural Water User Facilities)
3. The Fire Prevention and Control Plan shall be filed with the final plat. (Section V-A-21; Effect of Local Services; Effect on Public Health and Safety)
4. Prior to final plat, the shared road and cul-de-sac as shown on the plat shall be constructed to the standards required in the Subdivision Regulations and the construction shall be certified by a registered professional engineer. (Section V-A-10.c. and Table 1)
5. Filing of the final plat shall be subject to the review and approval by the Montana Department of Environmental Quality and Carbon County Sanitarian, as appropriate, for water, wastewater, solid waste, and stormwater drainage provisions. (Sections IV-B-8.b.ii and V-A-11, 12,13, and 14; Effect on the Natural Environment; Effect on Public Health and Safety)
6. The final plat shall show the location of all existing and required utility easements. (Section V-A-15.a; Effect on Local Services)
7. The final plat must include the following statement: “The undersigned hereby grants unto each and every person, firm or corporation, whether public or private, providing or offering to provide telephone, telegraph, electric, power, gas, cable television, water or sewer service to the public, the right to the joint use of an easement for the construction, maintenance, repair and removal of the lines and other facilities, in, over, under and across each area designated on this plat as “Utility Easement” to have and hold forever.” (Section V-A-15.h; Effect on Local Services)
8. Prior to filing the final plat, evidence should be submitted showing required mitigation through the Montana Sage Grouse Habitat Conservation Program has been completed. (Section V-A-5; Effect on Wildlife Habitat)

9. A notation shall be provided on the final plat that legal and physical access is provided per 76-3-608(3)(d), MCA. (Section IV-B-11.g.v; Compliance with the Montana Subdivision and Platting Act)
10. Prior to filing the final plat, the plat shall be submitted to the County Examining Land Surveyor and any comments sufficiently addressed. (Section IV-C-3.b.vi; Compliance with Survey Requirements)
11. The final plat shall be in substantial compliance with the plans and documents submitted as part of the preliminary plat application. (Section IV-C-5.b; Compliance with the Subdivision Regulations)
12. The final plat shall be submitted within two years of the date of preliminary plat approval, or an extension(s) to the approval period obtained. (Section IV-B-11; Compliance with the Subdivision Regulations)
13. Any new private covenants should meet the requirements of Section V-A-23 and be filed with the final plat. (Compliance with the Subdivision Regulations.
14. The final plat shall be prepared and reviewed in accordance with Section IV-C of the Carbon County Subdivision Regulations. (Compliance with the Subdivision Regulations)

AFTER RECORDING RETURN TO:

THE MONTANA LAND RELIANCE
P.O. BOX 355
HELENA, MT 59624

TO ENSURE THAT THE MONTANA LAND RELIANCE RECEIVES PROPER NOTICE WHEN ANY PROPERTY ENCUMBERED BY THIS DEED OF CONSERVATION EASEMENT IS SOLD OR TRANSFERRED, SECTION 12 OF THIS DEED OF CONSERVATION EASEMENT MAY REQUIRE GRANTORS TO PAY GRANTEE A TRANSFER FEE OF ONE HUNDRED DOLLARS (\$100.00) AT THE TIME OF TRANSFER. PLEASE CONTACT THE MONTANA LAND RELIANCE FOR FURTHER INFORMATION.

DEED OF CONSERVATION EASEMENT

THIS DEED OF CONSERVATION EASEMENT (“Easement”) is made this ____ day of _____, 20____, by **MICHAEL V. GREWELL** of 153 Cottonwood Road, Joliet, Montana 59041 and **CASSIDY GREWELL AKA CASSIDY (GREWELL) JUDA AKA CASSIDY L. GREWELL** of 153 Cottonwood Road, Joliet, Montana 59041 (together with their heirs, personal representatives, successors, and assigns, collectively “Grantors”), and **THE MONTANA LAND RELIANCE**, a Montana nonprofit corporation with a principal office at 324 Fuller Avenue, Helena, Montana 59601, and with a mailing address of P.O. Box 355, Helena, Montana 59624 (“Grantee”), and with a right of enforcement conveyed to the **UNITED STATES OF AMERICA** (the “United States”), acting by and through the United States Department of Agriculture (“USDA”) Natural Resources Conservation Service (“NRCS”) on behalf of the Commodity Credit Corporation (“CCC”).

RECITALS

1. This Easement is acquired with funds provided, in part, under the Agricultural Conservation Easement Program (ACEP) 16 U.S.C. Section 3865 et seq., and 7 CFR Part 1468 for the purpose of protecting grazing uses, protecting sensitive or declining native grasslands, and related conservation values by restoring or conserving the Property, and preserving, protecting, and enhancing the Conservation Values, in perpetuity, and preventing any use of, or activity on, the Property that will impair the Conservation Values or permit destruction of other significant conservation interests, in accordance with § 170(h)(5)(A) of the Code, Treasury Regulation § 1.170A-14(e)(2), and § 76-6-101, *et seq.*, MCA (the “Purpose of the Easement”). Baseline conditions of the Property are set forth in a Resource (Baseline) Documentation Report, a copy of which is maintained in the files of Grantee and in the office of the Montana NRCS, as further described in Section 9 of this Easement;

2. Grantors own real property in Carbon and Yellowstone Counties, Montana, described in Exhibit A and depicted on Exhibit F, both attached hereto and incorporated by this reference (“Property”) totaling approximately 1,644 acres;

3. Preservation of the Property by this Easement will yield significant public benefits to the people of the State of Montana, Carbon and Yellowstone Counties, and the United States by protecting, preserving, and providing the following significant resources, in perpetuity, in compliance with § 170(h)(4)(A) of the Internal Revenue Code of 1986, as amended (the “Code”) and § 76-6-101, *et seq.*, Montana Code Annotated (“MCA”):

a. Open-space land which maintains the rural, agricultural, and natural scenic qualities of the area, provides opportunities to continue traditional ranching practices in perpetuity, and protects sensitive or declining grasslands, as encouraged and supported by the following clearly delineated federal, state, and local governmental conservation policies:

(1) The Agricultural Conservation Easement Program, 16 U.S.C. Section 3865 et seq., which facilitated and provided funding for the purchase of this Easement, for the purpose of protecting grazing uses, protecting sensitive or declining native grasslands, and related conservation values by restoring or conserving the Property;

(2) The 2020 Carbon County Growth Policy, adopted on March 17, 2020, which recognizes the importance of preserving open space and agricultural lands in Carbon County, and which specifically encourages the voluntary preservation of open space in the county; and,

(3) The Montana Open-Space Land and Voluntary Conservation Easement Act, § 76-6-101, *et seq.*, and § 76-6-201, *et seq.*, MCA (the “Act”);

b. Open-space land which preserves significant views of working agricultural lands and Bureau of Land Management lands for the scenic enjoyment of the general public traveling on Cottonwood Road and recreating on adjacent Bureau of Land Management lands; and,

c. Open-space land which serves a variety of other purposes, including for the benefit of plants, biotic communities, fish and wildlife, including, but not limited to, greater sage-grouse, sharp-tailed grouse and other prairie species of concern, all of which use the Property,

(collectively referred to as the “Conservation Values”);

4. Preservation of the Property’s open space by this Easement will yield significant public benefit consistent with Treasury Regulation § 1.170A-14(d)(4)(iv)(A)(1)-(7), as the Property is unique to the area, under threat of development which would degrade the natural character of the area, in close proximity to both public and private lands managed for conservation purposes, and the general public has the opportunity to appreciate scenic open space views provided by the Property;

5. Grantors own the rights to identify, preserve, and protect in perpetuity the Conservation Values of the Property, which are of great importance to Grantors and to the public, and are worthy of preservation in perpetuity;

6. By conveying this Easement and its associated rights freely, voluntarily, and irrevocably to Grantee, Grantors intend to preserve and protect in perpetuity the Conservation Values of the Property;

7. Grantors, Grantee, and NRCS acknowledge that this Easement is acquired by Grantee the purpose of protecting grazing uses, protecting sensitive or declining native grasslands, and related conservation values by restoring or conserving the Property, thereby preserving and protecting in perpetuity the multiple, interrelated land features which are critical to agricultural lands, open space, and wildlife habitat; and,

8. Grantee is a qualified organization under § 76-6-104(5) and § 76-6-204, MCA, that is organized to conserve land for open space purposes. Grantee is also an organization described in § 170(h)(3) of the Code that is qualified to receive and hold conservation easements. By accepting this Easement, Grantee agrees that it is committed to protect the conservation purposes of this Easement and has the resources to enforce the restrictions in this Easement in perpetuity, as required by Treasury Regulation § 1.170A-14(c)(1).

NOW, THEREFORE, for Ten Dollars (\$10.00) and other good and valuable consideration, including Grantors' express intention and agreement to make an absolute, unconditional, unrestricted, irrevocable, and voluntary gift of part of the value of this Easement, Grantors hereby gives, grants, and conveys to Grantee, and the successors and assigns of Grantee, with warranties of title, this perpetual Easement on, over, and across the Property in accordance with the terms and conditions set forth below. Other than the bargain purchase price received by Grantors, no goods or services were provided in consideration of the grant of this Easement, which Grantee received as of the date noted on page 1 of this Easement.

SECTION 1. PURPOSES AND GENERAL EFFECT OF EASEMENT

A. Purposes. The purposes of this Easement are protecting grazing uses, protecting sensitive or declining native grasslands, and related conservation values by restoring or conserving the Property, and preserving, protecting and enhancing the Conservation Values, in perpetuity, and preventing any use of, or activity on, the Property that will impair the Conservation Values or permit destruction of other significant conservation interests, in accordance with § 170(h)(5)(A) of the Code, Treasury Regulation § 1.170A-14(e)(2), and § 76-6-101, *et seq.*, MCA.

In achieving these purposes, it is the mutual intention of Grantors and Grantee to permit the continuation of such pre-existing uses of the Property at the time of the grant of this Easement that do not conflict with the purposes and terms of this Easement. If one or more of the purposes of this Easement may no longer be accomplished, such failure of purpose shall not be deemed sufficient cause to terminate the entire Easement as long as any other purposes of the Easement may be accomplished.

Grantors and Grantee recognize that changes in natural conditions, landscapes, technologies, accepted farm, ranch, and forest management practices, and the situation of Grantors may result in an evolution of land uses and practices related to the Property, which are allowed, provided that such uses and practices are consistent with protection of the Conservation Values in perpetuity and the purposes and terms of this Easement. If any uses of the Property which are prohibited by this Easement become more economically valuable than the uses permitted by this Easement, Grantors and Grantee agree that any such economic changes shall not be considered to be "changed conditions" or a "change in circumstances" impairing the validity of this Easement, and shall not justify the amendment, judicial termination, or extinguishment of this Easement.

B. Perpetual restrictions. This Easement shall run with the land and burden title to the Property in perpetuity and shall bind Grantors, Grantee, and their respective heirs, successors, agents, assigns, lessees, licensees, occupants, invitees, and users of the Property, and any other person claiming under them, any and all of whom must comply with all terms and conditions of this Easement, and therefore, this Easement constitutes a restriction granted in perpetuity on the use which may be made of the Property in accordance with § 170(h)(2)(C) of the Code.

C. Dedication. The Property is hereby declared to be "open-space land" as defined in § 76-6-104(3), MCA, and may not be converted or diverted from open-space land uses, except as set forth in § 76-6-107, MCA and Section 10 of this Easement.

D. Incorporation of Recitals. The parties agree that the foregoing Recitals are true and correct and that they are incorporated into the terms and conditions of this Easement.

SECTION 2. RIGHTS CONVEYED

The rights conveyed by this Easement to Grantee are the following:

A. Identification and protection. To identify, preserve, and protect in perpetuity the Conservation Values of the Property, including, but not limited to, its significant open space and scenic values, subject, however, to Grantors' reserved rights as herein provided and further subject to all third-party rights of record in the Property existing at the time of conveyance of this Easement and not subordinated to this Easement. Even if the Property consists of more than one parcel for real estate tax or any other purpose, or if it was acquired previously as separate parcels, it will be considered one parcel for purposes of this Easement, and the restrictions and covenants of this Easement will apply to the Property as a whole.

B. Access. To enter the Property to inspect and monitor Grantors' compliance with the terms of this Easement in a manner that will not unreasonably interfere with the use of the Property by Grantors. Grantee shall also have the right to enter the Property to enforce the rights granted to Grantee in this Easement, and Grantors convey to Grantee a right of immediate entry onto the Property if, in Grantee's sole judgment, such entry is necessary to prevent damage to or destruction of the Conservation Values protected by this Easement. Aside from the rights of access granted to Grantee in the preceding sentences, and any access rights granted to the United States, or its agents pursuant to this Easement in this Section 2, paragraphs D and E, and Section 5, paragraph F, this Easement does not grant to Grantee, nor to the public, any rights to enter upon the Property.

C. Enforcement, injunction, and restoration. To enforce the terms and conditions of this Easement, to enjoin any activity on, or use of, the Property which is inconsistent with the purposes or terms of this Easement, including those activities which may have an adverse impact on the Conservation Values or would permit destruction of significant conservation interests, and to enforce the restoration of such areas or features of the Property as may be damaged by such activities or uses.

D. The United States' right of enforcement. Pursuant to 16 U.S.C. Section 3865 *et seq.*, the United States is granted the right of enforcement that it may exercise only if the terms of this Easement are not enforced by Grantee. The Secretary of the United States Department of Agriculture (the "Secretary") or the Secretary's assigns, on behalf of the United States, may exercise this right of enforcement under any authority available under state or federal law if Grantee, or its successors or assigns, fails to enforce any of the terms of this Easement, as determined in the sole discretion of the Secretary.

In the event the United States exercises this right of enforcement, it is entitled to recover any and all administrative and legal costs associated with any enforcement or remedial action related to the enforcement of this Easement from Grantors, including, but not limited to, attorney's fees and expenses related to Grantors' violations. In the event the United States exercises this right of enforcement, it is entitled to recover any and all administrative and legal costs associated with any enforcement of this Easement from Grantee, including, but not limited to, attorney's fees and expenses related to Grantee's violations or failure to enforce this Easement against Grantors, up to the amount of the United States' contribution to the purchase of this Easement.

E. The United States' rights of inspection and entry. Grantee will annually monitor compliance and provide the United States with an annual monitoring report that documents that Grantee and Grantors are in compliance with this Easement. If the annual monitoring report is insufficient or is not provided annually, or if the United States has a reasonable and articulable belief of an unaddressed violation, as determined by the Secretary, the United States may exercise its right of inspection. For purposes of inspection and enforcement of this Easement and the United States ALE-Agreement with Grantee, the United States will have reasonable access to the Property. Prior to its inspection of the Property, the United States shall provide advance notice to Grantee and Grantors and provide Grantee and Grantors a reasonable opportunity to participate in the inspection.

In the event of an emergency, the United States may enter the Property to prevent, terminate, or mitigate a potential or unaddressed violation of this Easement and will give notice to Grantee and Grantors at the earliest practicable time.

SECTION 3. RESERVED RIGHTS AND PROHIBITED USES

A. Reserved rights. Grantors reserve to themselves and to their heirs, personal representatives, successors, and assigns all rights accruing from ownership of fee title to the Property, including the right to engage in, or permit or invite others to engage in, all uses of the Property that are not prohibited herein, that do not destroy or impair the Conservation Values or other significant conservation interests, and that are not inconsistent with the terms or purposes of this Easement. The Conservation Values have not been, and will not be, materially adversely affected by allowing uses of the Property which now exist on the Property or which are permitted by this Easement. Further, the limited additional development of the Property permitted by this Easement will not impair the Conservation Values or other significant conservation interests. Without limiting the generality of the foregoing sentences, those uses and practices described in Exhibit B, attached hereto and incorporated by this reference, are expressly permitted, subject to any prior written approval requirements and any other conditions specified in Exhibit B.

B. Prohibited uses. Any activity on, or use of, the Property that impairs or destroys the Conservation Values or that is inconsistent with the terms or Purpose of this Easement is prohibited. Without limiting the generality of the foregoing sentence, the activities and uses described in Exhibit C, attached hereto and incorporated by this reference, are expressly prohibited.

C. Continuation of pre-existing uses. The Property is currently used for grazing and other agricultural purposes. Grantors and Grantee agree that the Conservation Values have not been, and will not be, adversely affected by continuing to allow such pre-existing uses of the Property after the grant of this Easement. Accordingly, and as described in Exhibit B, Grantors may continue pre-existing uses of the Property which do not conflict with the conservation purposes of this Easement.

D. Agricultural Land Easement Plan. Grantee shall prepare an Agricultural Land Easement Plan (the "ALE Plan") in consultation with Grantors and as needed NRCS. Grantee agrees to update the ALE Plan, in consultation with Grantors and as needed, NRCS, in the event the agricultural uses or ownership of the Property change. A copy of the current ALE Plan is kept on file with Grantee. The ALE Plan shall include a grassland management plan that describes the grassland resource; the management system and practices that conserve, protect, or enhance the viability of the grassland; and as applicable any habitat, species, or sensitive natural resources requirements, permissible and prohibited activities, and any associated restoration plans.

SECTION 4. PRIOR NOTICE AND APPROVAL

Any enterprise, use, or activity proposed to be done or undertaken by Grantors requiring Grantee's prior approval, consultation, notification, or mutual agreement (including any provision of Exhibit B or Exhibit C expressly requiring the prior approval of Grantee), or which may impair, harm, or destroy the Conservation Values or other significant conservation interests, may be commenced only after satisfaction of the notice and approval conditions of this Section 4. A purpose of requiring notice and prior approval is to afford Grantee the opportunity to ensure the proposed use or activity is consistent with the purposes and terms of this Easement and does not adversely impact the Conservation Values.

A. Grantors' written request for approval. Prior to the commencement of any enterprise, use, or activity for which Grantee's prior approval is required, or which may have an adverse impact on the Conservation Values, Grantors must send Grantee written notice of Grantors' intention to

commence or undertake such enterprise, use, or activity. Said notice must inform Grantee of all aspects of such proposed enterprise, use, or activity, including, but not limited to, the nature, siting, size, capacity, and number of structures, improvements, facilities, or uses, and the dates and duration of the activity or uses, as appropriate.

Grantors must notify the United States and/or NRCS (including the Chief of NRCS) when the United States has exercised its enforcement rights under this Easement or where specifically required under the provisions of this Easement.

B. Grantee's, and NRCS's addresses. Grantors' requests for approval shall be delivered in person to Grantee at Grantee's principal office located at 324 Fuller Avenue, Helena, Montana 59601; sent by United States mail or by commercial carrier or delivery service, addressed to Grantee at P.O. Box 355, Helena, Montana 59624; or to such other address as Grantors from time to time may be informed of in writing by Grantee; or conveyed by email, as provided below.

Grantors shall address the United States' notice to the State Office of NRCS at Federal Building, Room 443, 10 East Babcock Street, Bozeman, Montana 59715, or to such other address as Grantors from time to time may be informed of in writing by NRCS.

Grantors' request must provide the physical and electronic addresses to which a response may be sent, and the names, addresses, and contact information of persons authorized by Grantors whom may be contacted about the request.

Any request for approval of a proposed enterprise, activity, or use shall be:

(1) Delivered to the Grantee, and to NRCS if required, in person at the physical address stated above with a signed and dated proof of delivery;

(2) Sent to the Grantee, and to NRCS if required, by registered or certified United States mail at the mailing address stated above, return receipt requested;

(3) Sent to the Grantee, and to NRCS if required, by Federal Express or other reputable carrier or delivery service, provided that the sender obtains a signed and dated proof of delivery; or

(4) Conveyed to Grantee's Stewardship Director or current equivalent, and to NRCS if required, by email. If notice is conveyed by email, it shall be considered effective notice in accordance with this Section 4 only if Grantors receives a non-automated email response from Grantee, and from NRCS if required, confirming receipt of Grantors' email within ten (10) calendar days of the date that Grantors' email notice was sent. If Grantors does not receive a non-automated email response from Grantee, and from NRCS if required, confirming receipt of Grantors' email notice within ten (10) calendar days, Grantors shall re-send the notice using one of the other notice methods provided for in this Paragraph B, above.

C. Time for Grantee's response. Within thirty (30) days from Grantee's receipt of a request for approval, as indicated by the date of delivery receipt, which for email notice is the date of Grantee's non-automated email response as described in Section 4, paragraph B, Grantee shall review the proposed enterprise, use, or activity and notify Grantors of any objection thereto. The thirty (30) day period shall not begin until such time as Grantee has received adequate information from Grantors to evaluate the proposed activity. If Grantee requires additional information to evaluate the proposed activity, Grantee shall request the information from Grantors as soon as practicable and in any case not later than twenty (20) days after receiving the request for approval. Notwithstanding any approval by NRCS, Grantors may not proceed with any action for which

Grantors must obtain prior approval from Grantee without first receiving Grantee's express written consent.

Grantee's failure to respond within the time period specified above shall be deemed Grantee's constructive denial of approval, without prejudice, and Grantors may resubmit the same or a similar request for approval of Grantee.

D. Grantee's response to requests for approval. Only upon Grantee's express written approval may the proposed enterprise, use, or activity be commenced and/or conducted, and only in the manner explicitly represented by Grantors and approved by Grantee. Grantee shall not approve any request for approval of any exercise of a reserved right that would have a material adverse effect on this Easement's conservation purposes. For purposes of clarity, consistent with Section 3(A) hereof, the conservation purposes of this Easement have not been, and will not be, materially adversely affected by allowing the limited additional development and uses of the Property expressly permitted by this Easement.

Grantee's decision to approve or disapprove the activity proposed by Grantors shall be sent by email, registered or certified mail, return receipt requested, or by other delivery or carrier service with signed and dated proof of delivery, to Grantors at the address provided to Grantee in Grantors' request. If Grantee responds to Grantors' prior approval request by email, it shall be considered an effective response in accordance with this Section 4 only if Grantee receives a non-automated email response from Grantors confirming receipt of Grantee's email within ten (10) calendar days of the date that Grantee's email was sent. If Grantee does not receive a non-automated email response from Grantors confirming receipt of Grantee's email within ten (10) calendar days, Grantee shall send its decision regarding Grantee's prior approval request by registered or certified mail or other delivery or courier service, as provided in this paragraph. A decision by Grantee to disapprove a proposed activity shall be based upon Grantee's reasonable determination that the proposed enterprise, use, or activity is inconsistent with the purposes or terms of this Easement. If, in Grantee's judgment, conformity with the purposes or terms of this Easement is possible, Grantee's response shall inform Grantors of the manner in which the proposed enterprise, use, or activity can be modified to be consistent with this Easement.

E. Acts beyond Grantors' control. Grantors shall have no liability or obligation for any failure to give notice to Grantee regarding any prudent action taken by Grantors under emergency conditions to prevent, abate, or mitigate significant injury to the Property, or to any person, resulting from causes beyond Grantors' control, including, without limitation, fire, flood, storm, and earth movement, or from any other cause beyond the control of Grantors similar to those occurrences specified. Grantors shall provide notice to Grantee and NRCS of any emergency actions taken pursuant to this paragraph.

F. Rejection or refusal. Rejection or other refusal to accept notices, or objections, or approvals by any party hereto shall be deemed receipt thereof.

SECTION 5. BREACH AND RESTORATION

A. Grantee's remedies. If Grantee determines that Grantors, or third parties under Grantors' authority and control or acting with Grantors' knowledge or consent, are in violation of this Easement, Grantee shall give written notice to Grantors of such violation. In said notice of violation, Grantee shall demand corrective action by Grantors sufficient to cure the violation and, where the violation involves injury to the Property resulting from any use or activity inconsistent with the purposes or terms of this Easement, to restore the portion of the Property so injured. If Grantors:

(1) fail to cure the violation within thirty (30) days after receipt of notice thereof from Grantee;

(2) under circumstances where the violation cannot reasonably be cured within a thirty (30) day period, fail to begin curing the violation within thirty (30) days (or within thirty (30) days of Grantors' receipt of notice from Grantee, fail to agree with Grantee in writing on a date by which efforts to cure such violation will reasonably begin); or

(3) fail to continue diligently to cure such violation until finally cured,

Grantee may bring an action in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation by a temporary or permanent injunction, to recover any damages to which it may be entitled for violation of the terms of this Easement, and to require the restoration of the Property to the condition that existed prior to any such injury, or to the condition at the time of the grant of this Easement, in Grantee's sole discretion.

If Grantee, in its sole discretion, determines that a violation is threatened or imminent or that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values, Grantee may pursue its remedies under this paragraph without giving notice of violation required above and without waiting for the period provided for a cure to expire.

Grantee's rights under this paragraph apply equally in the event of either actual or threatened violations of the terms of this Easement. Grantors agree that Grantee shall be entitled to the injunctive relief described in this paragraph, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. If injunctive relief is inadequate to restore the Conservation Values as a result of a violation, and to compensate Grantee and the public for the loss and damage to Grantee's rights, Grantee shall be entitled to recover damages for violation of the terms of this Easement or injury to any Conservation Value protected by this Easement including, without limitation, damages for the loss of open space, scenic, aesthetic, or natural resource values. Without limiting Grantors' liability therefor, Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Property. Grantee's remedies described in this paragraph shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

B. Costs of enforcement. Any costs incurred by Grantee in enforcing the terms of this Easement against Grantors, including staff time, expert and consultant fees, reasonable costs of suit and attorneys' fees, and any costs of restoration necessitated by Grantors' violation of the terms of this Easement, shall be borne by Grantors.

C. Forbearance not a waiver. Enforcement of the terms of this Easement shall be at the discretion of Grantee, and forbearance by Grantee in the exercise of its rights under this Easement if there is a breach of any provision of this Easement shall not be deemed a waiver by Grantee of such provision or of any subsequent breach of this Easement, or of any of Grantee's rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantors shall impair such right or remedy or be construed as a waiver.

D. Waiver of certain defenses. Grantors hereby expressly waives any defense of laches, estoppel, or prescription.

E. Acts beyond Grantors' control. Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantors for any injury to or change in the Property resulting from causes beyond Grantors' control including, without limitation, fire, flood,

storm, and earth movement, or from any other cause beyond the control of Grantors similar to those occurrences specified, or from any prudent action taken by Grantors under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes. Grantors shall provide notice to Grantee of any emergency actions taken pursuant to this paragraph as soon as reasonably practical.

F. Enforcement rights of the United States—NRCS. The United States is granted contingent rights of enforcement of this Easement, as set forth in Section 2, paragraphs D and E.

G. Mediation. If a dispute arises between the parties concerning the consistency of any use or activity with the terms or purposes of this Easement, and if Grantors agree in writing not to proceed with the use or activity pending resolution of the dispute, either party may request of the other party, in writing, that the matter be mediated. Within fifteen (15) days of the receipt of such a request, the two parties may jointly appoint a single independent third-party mediator to hear the matter. Each party shall pay an equal share of the mediator's fee. In referring any matter arising under this Easement to mediation, Grantors and Grantee agree that mediation offers an alternative to the expense and time required to resolve disputes by litigation and is therefore often preferable to litigation. Nevertheless, mediation pursuant to this paragraph shall be voluntary, and this mediation provision shall not be interpreted as precluding or limiting the parties from seeking legal or equitable remedies available under this Section 5.

H. Third parties. Grantee shall have the right, but not the obligation, to pursue all legal and equitable remedies provided under this Section 5 against any third party responsible for any violation of this Easement. Grantors shall cooperate fully with Grantee in enforcement of this Easement against any third parties, and at Grantee's option, shall assign Grantors' right of action against any third party to Grantee, join Grantee in any action against a third party, or appoint Grantee as attorney-in-fact for the purpose of pursuing an enforcement action against a third party. This paragraph shall not be construed to relieve Grantors of any obligation to restore the Conservation Values when damaged or to take all reasonable actions to prevent violations of the Easement by third parties, and nothing herein shall prohibit Grantee from bringing an action against Grantors resulting from Grantors' failure to take reasonable actions to prevent violations of the Easement by third parties.

SECTION 6. COSTS AND TAXES

Grantors shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property, including responsibility for the control of noxious weeds in accordance with Montana law. Grantors shall pay any and all taxes, assessments, fees, and charges levied by competent authority on the Property, except any tax or assessment on this Easement. Any lawful tax or assessment on this Easement shall be paid by Grantee. Grantors shall also be responsible for and shall bear all costs associated with ensuring compliance with all federal, state, and local laws, regulations, rules, and ordinances.

SECTION 7. INDEMNITIES

A. Control of risks associated with Property ownership. Grantors and Grantee acknowledge and agree that Grantors retain ownership of fee title to the Property and therefore Grantors control day-to-day activities on, and access to, the Property, except for the rights conveyed to Grantee in this Easement and any third-party rights of record at the time of the grant of this Easement. Grantors therefore agree that general liability for risks, damages, injuries, claims, or costs arising by virtue of Grantors' continued ownership, use, and control of the Property shall remain with Grantors as a normal and customary incident of the right of real property ownership, except as specifically provided in paragraph C of this Section 7. Nothing in this Easement or the ALE Plan described in Section 3, paragraph D shall be construed as giving rise to any right or ability

in Grantee to exercise physical or managerial control over activities on the Property or to become an “owner” or “operator” of the Property within the meaning of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601 *et seq.* (“CERCLA”), or the Montana Hazardous Waste Act, §§ 75-10-401, *et seq.*, and 75-10-601 *et seq.*, MCA, and any successor statutes, and similar state and federal statutes.

B. Grantors’ obligation to indemnify. Grantors agree to hold harmless and indemnify Grantee from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, Grantee’s reasonable attorneys’ fees and costs of defense, arising from or in any way connected with the following:

- (1) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, except as set forth in paragraph C below;
- (2) the obligations specified in Section 6; and
- (3) the obligations arising from past, present, or future presence of any hazardous substance on the Property, and any obligation associated with the generation, discharge, transport, containment, or cleanup of any such hazardous substance. The term “hazardous substance” shall mean any chemical, compound, material, mixture, or substance that is now or hereafter defined or classified as hazardous or toxic by federal, state, or local law, regulation, or ordinance.

C. Grantee’s obligation to indemnify. Grantee shall hold harmless and indemnify Grantors from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including reasonable attorneys’ fees and costs of defense, arising from or in any way connected with injury to or the death of any person, or physical damage to any property, resulting from any of Grantee’s acts or omissions while Grantee is on the Property in the course of carrying out the duties and obligations of Grantee under the terms of this Easement.

D. Scope of indemnity. For purposes of this Section 7, Grantors’ and Grantee’s agreement to hold each other harmless and indemnify each other extends to the other’s respective directors, members, partners, officers, employees, and agents and their heirs, personal representatives, successors, and assigns.

SECTION 8. ASSIGNMENT OF EASEMENT

Grantee may transfer or assign this Easement, in whole or in part, provided that any such assignment or transfer must be made only to a “qualified organization” and “eligible donee” within the meaning of § 170(h)(3) of the Code and Treasury Regulation § 1.170A-14(c)(1), and to a “qualified private organization” or a “public body” qualified to hold conservation easements under §§ 76-6-104(4) and 76-6-104(5), MCA. Grantee shall require, as a condition of transfer or assignment of all or any portion of this Easement, that the transferee or assignee continue to carry out the conservation purposes of this Easement. In the event assignment of this Easement becomes necessary, Grantee shall seek an assignee which is mutually acceptable to Grantee and Grantors. Grantee agrees that it will make a reasonable effort in the event of any assignment to suggest an assignee which is a qualified organization other than a governmental unit referred to in § 170(c)(1) of the Code, which has protection of open space or other Conservation Values protected by this Easement as an organizational purpose. Grantee further represents to Grantors that its present intent is to assign its interest in this Easement only in connection with a dissolution of Grantee.

SECTION 9. DOCUMENTATION

Grantors have made available to Grantee, prior to the execution of this Easement, information sufficient to document the condition of the Property, including the condition of its Conservation Values, at the time of the grant of this Easement. This information is based in part upon a site visit to the Property by Grantee or Grantee's agents, and consists of mapping of physical features and resources, building envelopes, photographs of structures, developments, and improvements, a description of current and historical uses of the Property, and gathering of other appropriate information to document the condition of the Property and its Conservation Values as of the date of this Easement. The parties acknowledge that this information has been developed into a Resource Documentation Report, dated _____. The parties have signed a written acknowledgment, attached hereto as Exhibit D and incorporated by this reference, that a copy of the Resource Documentation Report has been provided to Grantors and Grantee, and that the Resource Documentation Report accurately represents the condition of the Property as of the date of the grant of this Easement in accordance with Treasury Regulation § 1.170A-14(g)(5)(i). The Resource Documentation Report shall be maintained on file with Grantee.

The parties intend that the Resource Documentation Report shall be used by Grantee to monitor Grantors' future uses of the Property and practices thereon, and compliance with the terms and conditions of this Easement. The parties agree that, in the event a controversy arises with respect to the condition of the Conservation Values, the parties shall not be foreclosed from utilizing any other relevant document, survey, or report to assist in the resolution of the controversy. The parties further agree that if the Resource Documentation Report contains any summaries of, or representations about, the terms or conditions of this Easement, including Exhibit F hereof, any conflict or inconsistency between the terms and conditions of this Easement and the Resource Documentation Report shall be governed by the express terms, conditions, and exhibits herein and not in the Resource Documentation Report.

SECTION 10. EXTINGUISHMENT: GRANTEE'S ENTITLEMENT TO PROCEEDS

A. Extinguishment and condemnation—ALE requirements. This Easement vests a real property interest in the Grantee, and a right of enforcement in Grantee and the United States. The interests and rights under this Easement may only be extinguished or terminated with written approval of Grantee and the United States. Due to the Federal interest in this Easement, the United States must review and approve any proposed extinguishment, termination, or condemnation action that may affect its Federal interest in the Property.

With respect to a proposed extinguishment, termination, or condemnation action, Grantors, Grantee, and the United States stipulate that the appraised fair market value of this Easement for bargain-sale acquisition purposes totals **[written number]** dollars (**[\$number]**). The United States contributed **[written number]** dollars (**[\$number]**), or **[written percent]** percent (**[number percent]%**) of the acquisition value of the Easement (the "Bargain Purchase Price").

The difference between the appraised fair market value of the Easement for acquisition purposes and the Bargain Purchase Price, **[written number]** dollars (**[\$number]**), or **[written percent]** percent (**[number percent]%**) of the value of the Easement, represents the value that the Grantors contributed or donated to Grantee towards the acquisition of this Easement.

The sum of these contributions, as divided by the fair market value of the land unencumbered by this Easement, **[written number]** dollars (**[\$number]**) at the time of the creation of this Easement, is hereinafter referred to as the "Proportionate Share." The Proportionate Share equals **[written percent]** percent (**[number percent]%**) of the appraised fair market value of the Property unencumbered by this Easement at the time of its creation and will remain constant over time.

If this Easement is extinguished, terminated, or condemned, in whole or in part, then the Grantors must reimburse Grantee and the United States in an amount of proceeds equal to the Proportionate Share of the fair market value of the Property unencumbered by this Easement after extinguishment, termination or condemnation in accordance with this Paragraph A and, if a federal income tax deduction is claimed by the Grantors, in accordance with Paragraph B below. The fair market value of the Property for the purposes of determining the proceeds due to the parties will be determined at the time all or a part of this Easement is terminated, extinguished, or condemned.

Unless otherwise provided in Paragraph B, the allocation of the proceeds received after Easement extinguishment, termination, or condemnation between the Grantee and the United States will be as follows: (a) to the Grantee or its designee, **[written percent] percent ([number percent]%)** of the Proportionate Share, or the proportionate value established by paragraph B below, whichever is greater; and (b) to the United States **[written percent] percent ([number percent]%)** of the Proportionate Share (less the higher amount of proceeds due to Grantee required by the Treasury regulations in paragraph B, if applicable).

Until such time as the Grantee and the United States receive the Proportionate Share from the Grantors or the Grantors' successors or assigns, Grantee and the United States each shall have a lien against the Property for the amount of the Proportionate Share due each of them. If proceeds from termination, extinguishment, or condemnation are paid directly to Grantee, as required by Paragraph B below, or to the United States, each party agrees to reimburse the other parties up to the amount of the allocation of Proportionate Share to which they are entitled, as set forth in this Paragraph A, unless the federal Treasury regulations require otherwise. Grantee agrees that all such proceeds it receives from termination, extinguishment or condemnation must be used in a manner which is consistent with the conservation Purpose of this Easement. If Grantee receives more than its Proportionate Share as set forth in this Paragraph A because of the Treasury Regulation requirements of Paragraph B below, Grantee must obtain the United States' written approval of its use of such additional funds to achieve conservation purposes that are consistent with the Purposes of this Easement.

B. Extinguishment and Condemnation for Purposes of a Federal Income Tax Deduction. As provided for in § 1.170A-14(g)(6)(i) of the Treasury Regulations, if a subsequent unexpected change in the conditions surrounding the Property arise in the future which makes impossible or impractical the continued use of the Property for the conservation purposes set forth herein, this Easement may be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction. For the purposes of Grantors' claim of a federal income tax deduction under IRC § 170(h) and associated Treasury Regulations, the fair market value of the Easement at the time of condemnation, termination or extinguishment shall be determined by multiplying (i) the fair market value of the Property unencumbered by the Easement at the time of termination by (ii) the ratio of the value of the Easement at the time of this grant to the value of the Property without deduction for the value of the Easement at the time of the grant. The ratio referred to in the preceding sentence shall be established by a qualified appraisal for federal income, gift and estate tax deduction purposes, pursuant to Treasury Regulation § 1.170A-13 and § 1.170A-14(h), and the ratio shall remain constant.

Pursuant to Treasury Regulation § 1.170A-14(g)(6)(ii), after termination of this Easement, in whole or in part, on a subsequent sale, exchange or involuntary conversion of the Property, Grantee must be entitled to a portion of the proceeds that is at least equal to the proportionate value of the Easement as established by this Subparagraph B. All of Grantee's proceeds, as determined above, must be used by the Grantee in a manner consistent with the conservation purposes of the original contribution.

SECTION 11. GRANTORS' REPRESENTATIONS AND WARRANTIES

A. General warranties and representations. Grantors represent and warrant that, after reasonable investigation and to the best of their knowledge, as of the date of the conveyance of this Easement:

(1) Grantors have clear title to the Property, Grantors have the right to convey this Easement to Grantee, and the Property is free and clear of any encumbrances, except those encumbrances that have been expressly approved by Grantee.

(2) Any handling, transportation, storage, treatment, or use of any substance defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, that has occurred on the Property prior to the date of this Easement has been in compliance with all applicable federal, state, and local laws, regulations, and requirements. No deposit, disposal, or other release of any hazardous substance has occurred on or from the Property, in violation of applicable law.

(3) No underground storage tanks are located on the Property, whether presently in service or closed, abandoned, or decommissioned, and no underground storage tanks have been removed from the Property in a manner not in compliance with the applicable federal, state, and local laws, regulations, and requirements.

(4) Grantors and the Property are in compliance with all federal, state, and local laws, regulations, and requirements applicable to the Property and its use.

(5) There is no pending or threatened litigation in any way affecting, involving, or relating to the Property, other than the ongoing statewide adjudication of water rights in Montana.

(6) No civil or criminal proceedings or investigations have been instigated at any time or are now pending, and no notices, claims, demands, or orders have been received, arising out of any violation or alleged violation of, or failing to comply with, any federal, state, or local law, regulation, or requirement applicable to the Property or its use, nor do there exist any facts or circumstances that Grantors might reasonably expect to form the basis for any such proceedings, investigations, notices, claims, demands, or orders.

B. The United States' general disclaimer and Grantor warranty. The United States, its employees, agents, and assigns disclaim and will not be held responsible for Grantee's or Grantors' negligent acts or omissions or Grantee's or Grantors' breach of any representation, warranty, covenant, or agreements contained in this Easement, or violations of any federal, state, or local laws, including all Environmental Laws (defined below) including, without limitation, those that give rise to liabilities, claims, demands, losses, expenses, damages, fines, fees, penalties, suits, proceedings, actions, costs of actions, or sanctions asserted by or on behalf of any person or governmental authority, and other liabilities (whether legal or equitable in nature and including, without limitation, court costs, and reasonable attorneys' fees and attorneys' fees on appeal) to which the United States may be subject or incur relating to the Property.

Grantors must indemnify and hold harmless the United States, its employees, agents, and assigns for any and all liabilities, claims, demands, losses, expenses, damages, fines, fees, penalties, suits, proceedings, actions and costs of actions, sanctions asserted by or on behalf of any person or governmental authority, and other liabilities (whether legal or equitable in nature and including, without limitation, court costs, and reasonable attorneys' fees and attorneys' fees on appeal) to which United States may be subject or incur relating to the Property, which may arise from, but are not

limited to, Grantors' negligent acts, omissions, or breach of any representation, warranty, covenant, agreements contained in this Easement or violations of any federal, state, or local laws, including all Environmental Laws (defined below).

C. Grantors' Environmental Warranty. For the purposes of this Easement, the terms "Environmental Law" or "Environmental Laws" mean any and all federal, state, local, or municipal laws, rules, orders, regulations, statutes, ordinances, codes, guidelines, policies, or requirements of any governmental authority regulating or imposing standards of liability or standards of conduct (including common law) concerning air, water, solid waste, hazardous materials, worker and community right-to-know, hazard communication, noise, radioactive material, resource protection, subdivision, inland wetlands and watercourses, health protection and similar environmental health, safety, building, and land use as may now or at any time hereafter be in effect.

For the purposes of this Easement, the term "Hazardous Materials" means any petroleum, petroleum products, fuel oil, waste oils, explosives, reactive materials, ignitable materials, corrosive materials, hazardous chemicals, hazardous wastes, hazardous substances, extremely hazardous substances, toxic substances, toxic chemicals, radioactive materials, infectious materials, and any other element, compound, mixture, solution, or substance that may pose a present or potential hazard to human health or the environment.

Grantors warrant that Grantors are in compliance with, and will remain in compliance with, all applicable Environmental Laws. Grantors warrant that there are no notices by any governmental authority of any violation or alleged violation of, non-compliance or alleged non-compliance with, or any liability under any Environmental Law relating to the operations or conditions of the Property. Grantors further warrant that Grantors have no actual knowledge of an undisclosed release or threatened release of Hazardous Materials, as such substances and wastes are defined by applicable federal and state law. Furthermore, Grantors warrant the information disclosed to Grantee and United States regarding any past violations or non-compliance with Environmental Laws and associated remedial actions, or any past releases of Hazardous Materials and any associated remedial actions is complete and accurate.

Moreover, Grantors hereby promise to hold harmless and indemnify Grantee and the United States against all litigation, claims, demands, penalties, and damages, including reasonable attorneys' fees, arising from or connected with the release or threatened release of any hazardous materials on, at, beneath, or from the Property, or arising from or connected with a violation of any Environmental Laws by Grantors or any other prior owner of the Property. Grantors' indemnification obligation will not be affected by any authorizations provided by Grantee or the United States to Grantors with respect to the Property or any restoration activities carried out by Grantee on the Property; provided, however, that Grantee will be responsible for any Hazardous Materials contributed after this date to the Property by Grantee.

SECTION 12. MISCELLANEOUS PROVISIONS

A. Partial invalidity. If any provision of this Easement or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions of this Easement and the application of such provisions to persons or circumstances other than those as to which it is found to be invalid shall not be affected thereby.

B. "Grantors" and "Grantee." The terms "Grantors" and "Grantee," as used herein, and any pronouns used in place thereof, shall mean and include the above-named Grantors and their heirs, personal representatives, successors, and assigns, and Grantee and its successors and assigns, respectively. If the Property has been transferred by the original Grantors, then the term "Grantors" means the then-current owner of the Property.

C. Titles. Section and paragraph titles and subtitles are for convenience only and shall not be deemed to have legal effect.

D. Subsequent transfers. Grantors agree that reference to this Easement, its recording reference, and the date of its recording in the public records of Carbon and Yellowstone Counties, Montana, will be made in any subsequent deed or other legal instrument by which Grantors convey any interest in the Property, including any leasehold interest. Grantors agree to incorporate the terms and conditions of this Easement by express recording reference to the Easement in any deed by which Grantors convey title to all or any portion of the Property. Any failure to comply with the terms of this paragraph shall not impact the perpetual term of this Easement and shall not render this Easement or any term or condition herein unenforceable.

E. Transfer fee. To ensure that Grantee receives proper notice, any time the entire Property, as described in Exhibit A, or any interest in the Property, is granted, sold, exchanged, devised, gifted, disposed of, or otherwise conveyed or transferred (collectively “transferred”) by the transferring Grantors to any third party, including any third party under the transferring Grantors’ control or ownership, Grantee shall have the right (but not the obligation) to require the transferring Grantors to pay a \$100 transfer fee to Grantee. The transferring Grantors shall notify Grantee of such transfer within thirty (30) days of such transfer or conveyance in writing as provided in Section 4.

F. Relationship of Easement to the Act. The State of Montana has expressly authorized the creation of conservation easements pursuant to the Act. This Easement is granted in accordance with the Act, but the existence of this Easement shall not be dependent on the continuing existence of the Act or any provisions thereof.

G. Subordination. No provision of this Easement is to be construed as impairing the ability of Grantors to use the Property as collateral for any loan, provided that any mortgage or lien arising after the date of execution of this Easement shall be subordinate to the terms of this Easement.

H. Notice of suit. Grantors shall immediately provide Grantee with notice of any lawsuit or administrative action involving the Property or which threatens Grantee’s interest in this Easement. Grantors shall send the notice to Grantee’s mailing address in Section 4, paragraph B, and shall include a copy of any lawsuit or administrative action filed or other relevant documentation. Grantors agree not to object to Grantee’s intervention in any such lawsuit or action. Such lawsuit or action could include, but is not limited to, quiet title action, partition, condemnation or eminent domain, foreclosure, bankruptcy, tax deficiency, environmental clean-up or enforcement, or any other lawsuit or action affecting the title to the Property and/or potentially affecting the Conservation Values on the Property.

I. Governing law. In the event any dispute arises over the interpretation or enforcement of the terms and conditions of this Easement, the laws of the State of Montana shall govern resolution of such dispute, without regard to conflict of laws.

J. Amendment. This Easement may be amended only if, in the sole and exclusive judgment of Grantee and the United States, by and through the Chief of NRCS, such amendment is consistent with the Purpose of this Easement and complies with all applicable laws and regulations, including but not limited to § 76-6-101, *et seq.*, MCA, and the Code; with Grantee’s conservation easement amendment policies then in effect; and with the following limitations: (a) no amendment shall be allowed that affects the perpetual duration of this Easement, or the status of Grantee as an eligible holder of conservation easements, under state or federal law; (b) any amendment must be consistent with the purposes of this Easement; (c) any amendment either must enhance, or must have no effect on, the Conservation Values which are protected by this Easement; and (d) no

amendment may confer prohibited private benefit or inurement on Grantors or other third parties. Any such amendment must be executed in writing by Grantors and Grantee and shall be recorded in the public records of Carbon and Yellowstone Counties, Montana. Grantee must provide timely written notice to the Chief of NRCS of any proposed amendments. Prior to the signing and recording of the amended Easement in Carbon and Yellowstone Counties, such amendments must be mutually agreed upon by Grantee, Grantors and the United States, by and through the Chief of NRCS. Any purported amendment that is recorded without the prior approval of the United States is null and void. Grantee retains sole and unlimited discretion whether to consent to any amendment and to make determinations regarding the criteria contained in this paragraph, subject to any determinations to be made by the United States as provided for above.

K. Conservation intent. Any ambiguities in this Easement shall be construed in a manner which best effectuates perpetual protection and preservation of the Conservation Values and the policy and purposes of § 76-6-101, *et seq.*, MCA. The parties acknowledge that each party and its counsel have reviewed and revised this Easement, and that no rule of construction that ambiguities are to be resolved against the drafting party shall be employed in the interpretation of this Easement.

L. Entire agreement and merger of previous understanding. This Easement, including all Exhibits attached hereto, constitutes the entire understanding between the parties hereto with respect to Grantors' grant of this Easement on and over the Property, and all prior or contemporaneous negotiations, communications, conversations, understandings, and agreements had between the parties hereto, oral or written, are merged in this Easement.

M. Disclaimer. Grantee does not warrant, guarantee, or otherwise offer any assurance as to the deductibility, if any, of the contribution of this Easement, or its qualification under any applicable state or federal laws. Grantors have been advised by Grantee to secure qualified independent legal, tax, and other professional advice pertaining to the grant of this Easement, and Grantors have had ample opportunity to do so.

N. Separate counterparts. This instrument may be executed in two or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same agreement.

O. Calculation of days. When this Easement refers to a specified number of days for purposes of determining a certain amount of time during which a party may, or is obligated to, complete an action, those days shall be considered calendar days for purposes of determining the amount of time.

P. Joint obligation. The obligations imposed on Grantors by this Easement shall be joint and several.

IN WITNESS WHEREOF, Grantors and Grantee have executed this Easement on the dates set forth by the respective notaries below, and this Easement shall be considered effective when it is recorded in the public records of Carbon and Yellowstone Counties, Montana.

[Signatures on following page(s)]

GRANTORS:

MICHAEL V. GREWELL

**CASSIDY GREWELL AKA CASSIDY (GREWELL) JUDA
AKA CASSIDY L. GREWELL**

State of _____)
County of _____)

This instrument was acknowledged before me on the ____ day of _____, 2024, by
MICHAEL V. GREWELL.

(Signature of Notarial Officer)
(Affix Official Stamp To Left)

State of _____)
County of _____)

This instrument was acknowledged before me on the ____ day of _____, 2024, by
CASSIDY GREWELL AKA CASSIDY (GREWELL) JUDA AKA CASSIDY L. GREWELL.

(Signature of Notarial Officer)
(Affix Official Stamp To Left)

GRANTEE:

THE MONTANA LAND RELIANCE,
a Montana Nonprofit Corporation

By _____
Name: George S. Olsen
Title: Director

State of Montana)
County of _____)

This instrument was acknowledged before me on the ____ day of _____ 2024, by
GEORGE S. OLSEN on behalf of THE MONTANA LAND RELIANCE.

(Signature of Notarial Officer)
(Affix Official Stamp To Left)

**EXHIBIT A
LEGAL DESCRIPTION OF PROPERTY**

CARBON COUNTY:

Township 3 South, Range 24 East of the Principal Montana Meridian, Carbon County, Montana

Section 19: S1/2SE1/4 EXCEPTING therefrom the following 3 tracts of land:

1. Certificate of Survey No. 2444 FT
2. SE1/4SW1/4SE1/4
3. SW1/4SE1/4SE1/4

Section 30: N1/2NE1/4 EXCEPTING therefrom the following 4 tracts of land:

1. Certificate of Survey No. 2047AM
2. Certificate of Survey No. 2444 FT
3. N1/2NE1/4NW1/4NE1/4
4. NW1/4NW1/4NE1/4NE1/4

Section 32: SE1/4SE1/4, SE1/4NE1/4, N1/2NE1/4, EXCEPTING therefrom the following 2 tracts of land:

1. Relocation Parcel E of Certificate of Survey No. 2438 RB
2. Certificate of Survey No. 2438 FT

Section 33: SW1/4

Township 3 South, Range 24 East of the Principal Montana Meridian, Carbon County, Montana

Section 28: S1/2SE1/4

Section 33: NE1/4NE1/4, S1/2NE1/4, SE1/4

Township 3 South, Range 24 East of the Principal Montana Meridian, Carbon County, Montana

Section 29: S1/2NW1/4, NW1/4NE1/4, N1/2SW1/4, SW1/4SW1/4,

SW1/4NE1/4 EXCEPTING therefrom Relocation Parcel B of Certificate of Survey No. 2438 RB,

SE1/4SW1/4 EXCEPTING therefrom Relocation Parcel D of Certificate of Survey No. 2438 RB

INCLUDING:

That part of Section 29, Township 3 South, Range 24 East, of the Principal Montana Meridian, in Carbon County, Montana, described as Relocation Parcels A and C, of Certificate of Survey No. 2438 RB on file in the office of the Clerk and Recorder of said County, under Document #376801.

Section 30: S1/2NE1/4, N1/2SE1/4

YELLOWSTONE COUNTY:

Township 3 South, Range 24 East of the Principal Montana Meridian, in Yellowstone County, Montana.

Section 34: SW1/4, W1/2SE1/4, SW1/4NE1/4, S1/2NW1/4

ALL OF THE FOREGOING DESCRIBED PROPERTY IS CONVEYED SUBJECT TO all third-party rights of record in the Property existing at the time of conveyance of this Easement and not subordinated to this Easement.

EXHIBIT B PERMITTED USES AND PRACTICES

The following uses and practices, though not an exhaustive recital of consistent uses and practices, may be conducted consistent with the terms and purposes of this Easement and are permitted as described herein. Some of these consistent land uses and practices are identified below as being subject to specified conditions or to the provisions of Section 4 of this Easement requiring Grantee's prior written approval. All uses of the Property, and any construction, maintenance, or development on the Property, must be conducted in a manner consistent with the terms and purposes of this Easement.

1. Agricultural activities. The provisions of this Easement limit the types of agricultural operations that can occur on the Property to those that promote the Purpose of the Easement. No uses will be allowed that violate federal laws, including federal drug laws, or that decrease the Easement's protection for the Purpose of this Easement. Allowed agricultural uses of the Property include the following activities, subject to the qualifications stated below:

a. The production, processing, and marketing of agricultural crops and livestock provided these activities are conducted in a manner consistent with the terms of this Easement, and the ALE Plan described in Section 3, paragraph D.

b. Grazing, haying, harvesting for hay and non-crop seed production, mowing, constructing fire breaks, conducting fire suppression and rehabilitation activities, and conducting common grazing practices, including cultural practices, consistent with the provisions of this Easement and Purpose of this Easement are allowed. The term "common grazing practices" means those practices customary to the region where the Property is located related to livestock grazing, forage management, and maintenance of infrastructure required to conduct livestock grazing on the Property. Outside the areas identified as "hayland" in Exhibit G, Grantors must not hay, mow, or harvest for seed during certain nesting seasons for birds whose populations are in significant decline. Determinations of birds whose populations are in significant decline, nesting seasons for such birds, and the areas of the Property affected by this restriction will be set forth within the Resource Documentation Report, the ALE Plan, and the grassland management plan described in Section 3, Paragraph D. If grassland bird populations that use the Property are later determined in writing by Grantee and NRCS to have recovered and are no longer in significant decline, Grantee, NRCS, and Grantors may update and amend the ALE Plan's determinations for which the restrictions on mowing, haying, and seed harvesting apply.

c. Except for grazing uses, no-till hay production in the areas identified as "hayland" in Exhibit G, totaling 102 acres which is six percent (6%) of the Property, and grassland restoration and conservation, the cultivation or production of crops, non-perennial forages for human or domestic animal consumption, crop seed production, or planting of orchards, vineyards, berries, tree farms, or other perennial non-grassland agricultural product is prohibited.

2. Recreational activities. To use the Property for recreational activities, including, but not limited to, hunting of game animals and birds, fishing, hiking, wildlife viewing, and quiet enjoyment by Grantors and invitees, provided that all such recreational activities on the Property must remain consistent with protection and preservation of the Conservation Values, including maintaining the Property for the Purpose of this Easement. Commercial uses of the Property for recreation are permitted only as set forth in this Exhibit B, paragraph 11. This paragraph shall not be construed to permit construction of any recreational facilities, structures, or improvements on the Property, except for those structures that are specifically permitted in this Exhibit B, paragraph 4.

3. Water resources and surface alteration. Subject to the impervious surface limitation in Exhibit C, paragraph 11, to maintain, enhance, and develop water resources on the Property for permitted agricultural activities, fish and wildlife uses, and domestic needs. Permitted uses may include, but are not limited to, the following: the right to restore, enhance, and develop water resources, including existing ponds, wetlands, rivers, and streams; to locate, construct, repair, and maintain irrigation systems; and to develop and maintain stock watering facilities and domestic groundwater wells. The construction of new ponds or other new water features on the Property is subject to the prior approval of Grantee pursuant to Section 4 of this Easement.

Provided Grantors obtain prior approval of Grantee pursuant to Section 4, to develop new ponds pursuant to a plan approved by Grantee for agricultural use, fire protection, or wildlife enhancement, including enhancement through wetland restoration, enhancement, or creation; to disturb the soil surface for purposes of erosion and sediment control pursuant to a plan approved by Grantee; to conduct soil disturbance activities required in the construction of approved buildings, structures, roads, and utilities provided that the required alteration has been approved in writing by Grantee as being consistent with the Purpose of this Easement; and, to conduct agricultural activities and related conservation activities in accordance with the terms and conditions of this Easement, and the ALE Plan described in Section 3, paragraph D.

4. Structures and Building Envelopes. Subject to the impervious surface limitation in Exhibit C, paragraph 11, to construct, maintain, repair, remodel, and make limited additions to, and in the event of their removal or destruction, to replace structures on the Property only as allowed by this paragraph 4. Except as otherwise permitted in this Exhibit B, all structures and improvements must be located within the Building Envelopes defined in subparagraph 4c below. New or replacement structures must be constructed in a manner consistent with protection of the Conservation Values and must adhere to any height and square footage limitations described herein. Grantee retains sole discretion to make determinations regarding the criteria contained in this paragraph 4.

a. Residential dwelling units. For the purpose of this Easement, the term “residential dwelling unit” means a structure, or a portion thereof, with sleeping accommodations and kitchen facilities that is provided, used, constructed, converted, remodeled, added onto, or replaced for habitation or occupation by one or more people. The definition of residential dwelling units includes, but is not limited to, structures used as residences; apartments or suites that are a part of non-residential outbuildings allowed in subparagraph 4b below; guest houses; employee houses; cabins; and mobile homes, trailers, and other moveable living units.

No residential dwelling units currently exist on the Property, and no more than one (1) residential dwelling unit is permitted on the Property. The residential dwelling unit, and replacements thereof, must be located within the designated Building Envelopes defined in subparagraph 4c below and adhere to the following square footage and height limitations. No other habitations, living, or sleeping quarters are permitted on the Property.

The one (1) permitted residential dwelling unit’s footprint may not exceed 2,500 square feet, measured by exterior dimensions and not including decks or porches. Further, any construction of, remodel of, addition to, or replacement of the one (1) permitted residential dwelling unit may not exceed three (3) stories in height, as measured from the highest point above finished grade.

To ensure that permitted new, remodeled, and replacement residential dwelling units are constructed in a manner consistent with protection of the Conservation Values and with the criteria herein, Grantors must submit copies of architectural/construction plans to Grantee for prior approval, as provided in Section 4 hereof.

b. Non-residential outbuildings. Non-residential structures and improvements, which are used for permitted agricultural or recreational activities or used in association with the permitted residential dwelling unit (“non-residential outbuildings”), are permitted only within the Building Envelopes defined in subparagraph 4c, and include, but are not limited to, barns, shelters, corrals, other agricultural facilities and improvements, garages, workshops, and sheds, all used for non-residential purposes.

c. Building Envelopes. All new or replacement structures and improvements must be located within the Building Envelopes delineated in Exhibit F, as further provided in this subparagraph.

(1) Agricultural Building Envelope. The “Agricultural Building Envelope” depicted and delineated in Exhibit F attached hereto and incorporated by reference, consists of approximately three (3) acres. New non-residential outbuildings are permitted within the Agricultural Building Envelope.

(2) Residential Building Envelope. The “Residential Building Envelope” depicted and delineated in Exhibit F attached hereto and incorporated by reference, consists of approximately three (3) acres. The one (1) permitted residential dwelling unit and all its non-residential outbuildings must be located within the Residential Building Envelope. New non-residential outbuildings are permitted within the Residential Building Envelope.

The purposes of the Building Envelopes are to limit development to locations on the Property consistent with preservation and protection of the Conservation Values, in perpetuity; to allow Grantors flexibility in use of the residential dwelling units and non-residential outbuildings; and to cluster residential uses and other structures on the Property. Grantors and Grantee have carefully selected the location and sizes of the permitted Building Envelopes to ensure that Grantors’ reserved rights must be exercised consistently with perpetual protection of the Conservation Values and other significant conservation interests. If necessary, wells and drain fields may be located outside of the Building Envelopes.

d. Temporary structures. For purposes of this subparagraph, “temporary structures” are defined as structures that are not constructed or permanently anchored in the ground, and that are used in conjunction with and are supportive of, agricultural or other activities permitted by this Easement. Subject to Grantee’s prior approval pursuant to Section 4 of this Easement, temporary structures may be located anywhere on the Property, provided such locations are consistent with protection of the Conservation Values, and neither individually nor collectively have an adverse impact on the Purpose of the Easement. Temporary structures do not include pole barns, sheds, or any structures utilizing a foundation or posts permanently anchored in the ground, which permanently anchored structures are considered non-residential outbuildings for purposes of this Easement and must be located within the Building Envelopes. Grantee’s prior approval is not required to locate temporary structures within the Building Envelopes described in subparagraph 4c.

5. Transfer of land. Grantors and Grantee agree and intend that the Property will remain as one whole, intact, single piece of real estate. Grantors may grant, sell, exchange, devise, gift, dispose of, or otherwise convey or transfer (collectively “transfer”) all or any portion of Grantors’ right, title, estate, and interest in the Property in unified title and as one (1) parcel only, subject to the terms, conditions, rights, restrictions, and obligations contained in this Easement. Accordingly, separate conveyance of a portion of the Property or division or subdivision of the Property is prohibited. The Property shall be conveyed expressly subject to all terms, conditions, rights, restrictions, and obligations contained in this Easement.

Grantors shall furnish Grantee with a copy of any document or instrument of conveyance utilized to effect the transfer of the Property within thirty (30) days of the execution of said document or conveyance. **ANY SUCH TRANSFER MUST COMPLY WITH THE TRANSFER FEE REQUIREMENTS AS DESCRIBED IN SECTION 12(E) OF THIS EASEMENT.**

Nothing in this Easement shall be construed to prevent Grantors from owning the Property in co-tenancy or joint tenancy, wherein each co-tenant or joint tenant shall have undivided interests in the whole of the Property, as described in Exhibit A. Grantors also retain the right to enter into leases, licenses, or other transfers of a right to use the Property or to occupy a residential dwelling unit, provided such agreements are made expressly subject to the terms and conditions of this Easement. Grantors expressly convey to Grantee the right to enforce this Easement against, and to seek and recover all remedies for violation of the terms of this Easement from tenants, lessees, licensees, occupants, invitees, and users of the Property with Grantors' knowledge or consent.

All leases, including all short-term leases or rental agreements that confer rights of use or occupancy, must include reference to this Easement and include an obligation of the lessee to comply with the terms and conditions of this Easement.

6. Limited mineral activity. Subject to the prior approval of Grantee and Chief of NRCS as provided in Section 4 of this Easement, to explore for or extract subsurface oil, gas, or other subsurface minerals (or to lease, sell or otherwise dispose of the rights thereto) in or under the Property, subject, however, to the following conditions. The requirements of this paragraph 6 shall govern and control any and all rights to any mineral substance owned by Grantors as of the date of this Easement or later acquired by Grantors.

a. Surface mining prohibited. As provided in Exhibit C, paragraph 2, there shall be no extraction or removal of any minerals by any surface mining method, in accordance with § 170(h)(5)(B) of the Code and applicable Treasury Regulations.

Notwithstanding any provision hereof to the contrary, Grantors retain the right to allow archaeological and paleontological investigation, exploration, and excavation, and the right to collect and transport off of the Property any paleontological or archaeological fossils, artifacts, or resources, provided that such activities have only limited, localized, and temporary impacts on the Property, that such activities are not irretrievably destructive of any Conservation Values, and further provided that Grantors must obtain Grantee's approval pursuant to Section 4 hereof prior to the beginning of any such activities to ensure such activities are conducted in a manner consistent with perpetual protection of the Conservation Values. Any such limited-impact archaeological or paleontological activities shall require Grantors to adhere to the conditions set forth in this paragraph 6 of this Exhibit B, expressly including, but not limited to, the requirement that any disturbed areas or excavation sites be reclaimed and revegetated to their original state by restoring land contours and topsoil, by replanting native vegetation, and by husbanding replanted native vegetation until the vegetation is mature, established, and self-perpetuating.

b. Limited subsurface mining conditionally permitted. Subject to the prior approval of Grantee and Chief of NRCS as provided in Section 4 of this Easement, Grantors reserve the right to explore for or extract oil, gas, or other subsurface minerals (or to lease, sell or otherwise convey the rights thereto) by subsurface mining methods, subject to and only in strict compliance with this paragraph 6 and Exhibit C, paragraph 2. There shall be no exploration for or extraction of oil, gas, or other minerals by any method of mining if such activity would impair any Conservation Value of the Property, in Grantee's sole judgment. Subsurface mineral exploration or extraction may be permitted only if the subsurface mining methods Grantors propose are approved in advance by Grantee as consistent with the purposes and terms of this Easement and only if the subsurface mining methods, as proposed and when implemented, either do not disturb the surface of the land, or

disturb the surface of the land in ways that are limited, localized, and temporary. No method of mining will be permitted by Grantee that is inconsistent with the conservation purposes of this Easement at any time, or that is irretrievably destructive of any significant conservation interest. Impervious surfaces, as defined in Exhibit C, paragraph 11, of this Easement include any surface disturbance or impervious surfaces associated with subsurface mineral development allowed by this paragraph.

Grantee and Grantors must demonstrate prior to the initiation of mineral development activity that such subsurface mineral development shall:

- (1) Be conducted in accordance with applicable state law;
- (2) Have a limited and localized impact;
- (3) Not harm the Purpose of this Easement;
- (4) Not materially alter or affect the existing topography, as determined by Grantee and the Chief of the NRCS;
- (5) Comply with a subsurface mineral development plan that includes a plan for the remediation of impacts to the Purpose of this Easement, which includes reclaiming and restoring all areas of the Property that are impacted by the subsurface mineral development and such plan is approved by Grantee and the Chief of the NRCS prior to the initiation of mineral development activity;
- (6) Not be accomplished by any surface-mining method;
- (7) Be within the impervious surface limits described in Exhibit C, paragraph 11; and,
- (8) Use practices and technologies that minimize the duration and intensity of impacts to the Purpose of this Easement.

c. Additional restrictions on subsurface mining. In addition, subsurface mining methods used must adhere to the following conditions:

(1) Water. No exploration for or extraction of minerals using subsurface mining methods shall take place beneath any stream, waterway, or protected wetland, and no subsurface mining methods may degrade the quality of any lake, pond, well, stream, groundwater, or surface water, including, but not limited to, any source of water utilized by Grantors for agricultural or residential purposes. Any wastewater resulting from permitted mineral exploration or extraction using subsurface mining methods which is of materially poorer quality than existing natural water sources or supplies must be treated so that its quality is substantially equivalent to existing natural water quality where the wastewater is discharged or released into surface waters on the Property and when groundwater is reinjected or otherwise disposed of under the Property.

(2) Restoration of surface disturbances. Any surface disturbance resulting from permitted mineral exploration or extraction activities using subsurface mining methods must be limited, localized, temporary, and approved in advance by Grantee as consistent with the purposes and terms of this Easement. Any such disturbances to the surface of the land shall be restored upon completion of subsurface mining activities to a condition equivalent to or better than its state prior to the disturbance. All areas of the Property that are impacted by subsurface mineral development pursuant to this section must be reclaimed and restored within a reasonable

time, as determined by the Grantee and Chief of NRCS, at cessation of subsurface mineral development activities. Surface restoration activities may include, but are not limited to, reshaping land contours, restoring soils, replanting native vegetation, and stewarding replanted native vegetation until the vegetation is mature, established, and self-perpetuating.

(3) Roads. Whenever possible, access to areas of the Property above the locations of subsurface exploration or extraction sites shall be by existing roads. Any new road shall be temporary, subject to prior approval by Grantee as provided in Section 4, and sited and maintained in accordance with this Exhibit B, paragraph 9, so as to minimize impacts to the Conservation Values. Any new, temporary roads shall be fully reclaimed after subsurface mineral exploration and extraction activities are concluded to a condition equivalent to or better than the condition of the surface of the Property prior to the construction of the temporary road.

(4) Temporary structures. The number and kind of temporary structures placed on the Property in connection with mineral exploration or extraction activities using subsurface mining methods shall be limited to the minimum necessary to accomplish said activities and shall be approved in advance by Grantee in accordance with Section 4. All such temporary structures shall be removed upon the termination of subsurface mining activities and the sites of any such structures shall be restored pursuant to subparagraph (2) above.

(5) Notice and extended approval period. Grantors shall advise Grantee in writing at least sixty (60) days prior to engaging in any mineral exploration or extraction activities using subsurface mining methods (or leasing, selling, or otherwise disposing of the rights thereto) whether or not such activities (or leasing, selling, or otherwise disposing of the rights thereto) could result in any surface disturbance. For the purpose of this paragraph, Grantee's period in which to grant or deny prior approval of any mineral exploration or extraction proposal under Section 4, paragraph C, shall be extended to sixty (60) days. The sixty (60) day period shall not begin until Grantee has received complete information with sufficient detail and particularity, in Grantee's judgment, to evaluate the request.

d. Surface use agreements. To ensure Grantee's ability to protect Grantee's vested property right in this Easement and to uphold its obligations under the terms of this Easement, Grantors grant to Grantee non-exclusive rights to negotiate and enter surface-use agreements, right-of-way agreements, leases, assignments, non-surface occupancy agreements, including agreements for the payment of surface damages, and any other agreements arising from or related to mineral, oil, gas, or hydrocarbon exploration and extraction, development, production, and removal activities conducted by third parties (collectively, "Mineral Activity Agreements"). Grantors and Grantee agree that neither party shall unilaterally enter into any Mineral Activity Agreements. Grantee shall have the right to receive notices of any proposed exercise of separated or severed mineral rights, if any. If Grantors is contacted regarding the exploration for or extraction of minerals by any severed mineral rights holder, Grantors shall provide notice to Grantee of said contact within ten (10) days. In any Mineral Activity Agreement, Grantors and Grantee shall require, to the greatest extent possible, that any mineral activities conducted by third parties are conducted in accordance with this Exhibit B, paragraph 6, and Exhibit C, paragraph 2.

7. Timber management. Forest management and timber harvesting is allowed, provided these activities are carried out, to the extent practicable, in accordance with current, generally accepted best management practices for the sites, soils, and terrain of the Property. Accordingly, Grantors may conduct forest management activities and selectively harvest timber on the Property in accordance with all federal, state, and local laws, regulations, rules, and ordinances, provided such activities protect and are consistent with the Conservation Values, as further detailed below.

a. Selective harvest for safety and permitted uses. Grantors reserve the right to remove select trees that present a hazard to persons or property, and to cut firewood, posts, and

poles for personal use, solely under the criteria set forth in this paragraph. All timber harvested by Grantors pursuant to this subparagraph must be used or disposed of on the Property. All selective timber harvests pursuant to this subparagraph must protect and minimize adverse impacts to the Conservation Values. In connection with the upkeep, maintenance, and repair of permitted structures and residential areas, Grantors specifically reserve the right to clear brush; to prune, trim, and remove trees; and to plant trees, shrubs, flowers, and other native or non-native species for landscaping or gardening purposes, all within the Building Envelopes described in paragraph 4 of this Exhibit B.

b. With prior written approval of a timber harvest plan pursuant to Section 4.

Upon obtaining the prior approval of Grantee as provided in Section 4 hereof, Grantors may selectively harvest timber for use off the Property, including selective timber harvests for the abatement of disease or insect infestations, and for sale, trade, exchange or use off the Property, provided such harvests are conducted consistently with protection of the Conservation Values and solely under the conditions in this paragraph. Any timber harvest permitted by this subparagraph must be consistent with the purposes of this Easement; must protect and minimize adverse impacts to the Conservation Values; and shall require preparation, at Grantors' expense, of a timber harvest plan by a qualified natural resource professional. Grantors shall contact Grantee prior to the preparation of a timber harvest plan to obtain the required information to be included in any such plan, which shall include an evaluation of the criteria in this subparagraph in addition to other information that Grantee may require, to ensure that the Conservation Values are protected in perpetuity. The timber harvest plan shall be furnished to Grantee in connection with Grantors' request for prior approval of any proposed timber harvest pursuant to this subparagraph, and any timber harvest, if approved by Grantee as provided in Section 4 hereof, shall be conducted in accordance with said plan. Grantors must obtain Grantee's written approval of such plan prior to the initiation of any timber harvest pursuant to this subparagraph. Notwithstanding the foregoing, Grantee shall not approve any timber harvest plan which is inconsistent with perpetual protection of the Conservation Values.

8. Fences. Fences may be maintained and replaced, and new fences installed if they are necessary for agricultural operations or other allowed uses on the Property or to mark boundaries of the Property. Maintenance, replacement, and installation of fences must be conducted in a manner consistent with the Purpose of this Easement and will not negatively impact the habitat, species, or sensitive natural resources identified for protection in the Resource Documentation Report. Grantors reserve the right to construct fences impassable to wildlife around building envelopes, haystacks, harvested crops, residential gardens, and kennels or enclosures for domestic animals other than pastured livestock.

9. Roads. Subject to the impervious surface limitation in Exhibit C, paragraph 11, to repair, maintain, and improve existing roads on the Property, as delineated in Exhibit F and as documented in the Resource Documentation Report, provided that existing roads may not be widened or improved unless widening and improving is within impervious surface limits, approved in advance by Grantee pursuant to Section 4, and necessary to carry out the agricultural operations or other allowed uses on the Property. For purposes of this Easement, "road" means a road that is intentionally constructed, periodically graded or maintained, has an improved surface and raised roadbed, consists of dirt, gravel, or paved surfaces, and may have excavated cut and fill areas where it traverses hillslopes. The term does not include "two-tracks" created incidentally by driving vehicles over the same path until the ground and vegetation show lasting signs, or tracks, of such use. Grantors may use and create unimproved trails and two-tracks that are necessary for the agricultural purposes protected by this Easement. Such unimproved trails and two-tracks may include two-track byways used by agricultural equipment and off-road vehicles for crop cultivation, field access, livestock management and monitoring purposes, and access to irrigation ditches, pumps, and infrastructure.

Grantors may construct new roads with the prior written approval of Grantee pursuant to Section 4 if such roads are (i) within the impervious surface limitation in Exhibit C, paragraph 11; (ii) necessary to carry out the agricultural operations or other allowed uses on the Property, which include but are not limited to the following: (a) for agricultural activities as permitted in this Exhibit B; (b) for access to the residential dwelling unit and other structures as permitted in this Exhibit B; (c) in connection with timber management activities as permitted in this Exhibit B; (d) for mineral activity as permitted in this Exhibit B; or (e) for access to Grantors' unencumbered property in sections 19, 30, and 33 of Township 3 South, Range 24 East; and (iii) located and constructed consistent with protection of the Conservation Values. In requesting Grantee's prior written approval, Grantors' written notice shall include a construction plan describing the purpose of the road and how it is consistent with protection of the Conservation Values, its location on a topographic map, and, to the extent deemed necessary by Grantee, discussion of the following: road grade, drainage, erosion/sedimentation impacts and mitigating efforts, areas of cut and fill, and special concerns such as culvert placement, bridges, fords, and buffer strips between roads and streams. Seeding and reestablishment of cover vegetation on exposed road cuts, fills, and banks shall be required.

Any new roads must be constructed in a location and manner that is consistent with the Purpose of the Easement and will not negatively impact the habitat, species, or sensitive natural resources identified for protection in the Resource Documentation Report.

Grantors may grant right-of-way easements to neighbors over existing roads. The granting or modification of right-of-way easements for roads is prohibited when the road will adversely impact the Purpose of this Easement as determined by Grantee in consultation with the Chief of NRCS.

10. Utilities. To install, maintain, repair, and replace utility structures, lines, conduits, cables, wires, or pipelines ("utilities" and "utility services") upon, over, under, within, or beneath the Property to existing and subsequently constructed structures and improvements permitted by this Easement, solely under the criteria set forth in this paragraph. Any such utilities or utility services must be buried where technically and economically feasible, and must not, whether individually or collectively, have an adverse impact on the Purpose of the Easement, and must not materially impair the Conservation Values, in Grantee's sole judgment.

Within the Building Envelopes Grantors may construct, maintain, repair, and, in the event of their removal or destruction, replace utilities and utility services and wind, solar, hydroelectric, geothermal, and other types of renewable energy generation facilities solely for uses permitted on the Property by this Easement, except that any incidental surplus energy may be sold commercially for use off of the Property or credited to Grantors' utility service (net metering). Renewable energy production is allowed for the purposes of generating energy for the agricultural needs of the Property. Renewable energy sources must be built and maintained within impervious surface limits set forth in Exhibit C, paragraph 11, and within the Building Envelope described in Exhibit B, subparagraph 4c, with minimal impact on the Conservation Values of the Property and consistent with the Purpose of this Easement.

With the prior approval of Grantee pursuant to Section 4 of this Easement, Grantors may also grant right-of-way easements for utility services to neighboring properties, provided that any such new right-of-way easements do not materially impair the Conservation Values protected by this Easement, in Grantee's sole judgment. The granting or modification of right-of-way easements for utilities is prohibited when the utility will adversely impact the Purpose of this Easement as determined by Grantee in consultation with the Chief of NRCS.

With the prior approval of Grantee pursuant to Section 4 of this Easement, Grantors may also permit the replacement, maintenance, and repair of existing utility distribution services running through the Property, including the reconstruction of new electrical utility distribution lines

to replace existing infrastructure (but not electrical transmission lines which are prohibited by Exhibit C, paragraph 10). Further, with prior approval of Grantee pursuant to Section 4, Grantors may grant new or upgraded utility distribution line right-of-way easements if the utility easement does not materially impair the Conservation Values protected by this Easement, in Grantee's sole judgment. Grantee's prior approval of new or upgraded utility distribution services and right-of-way easements (if allowed after Grantee's consultation with the Chief of the NRCS) will require submission by Grantors of a construction/installation plan to ensure that the Conservation Values are protected. Grantors shall contact Grantee prior to the preparation of the construction/installation plan to obtain the required information to be included in any such plan, which shall include, but not be limited to, a description of how such plan is consistent with protection of the Conservation Values. Any utility construction/installation, if approved by Grantee as provided in Section 4 hereof, must be conducted in accordance with said plan. Any new or upgraded utility distribution services with new or expanded associated right-of-way easements (if allowed after Grantee's consultation with the Chief of the NRCS) must be memorialized in a written agreement that is recorded in the public records of Carbon and Yellowstone Counties, signed by Grantors, Grantee, and the utility service provider prior to beginning construction.

11. Commercial activities. Businesses, trades, professions, arts, crafts, and other commercial activities (hereafter "commercial activities") that are consistent with protection of the Conservation Values are permitted on the Property as provided in this paragraph. Nothing in this Exhibit B, paragraph 11 shall apply to Grantors' rights to engage in commercial uses that are specifically reserved to Grantors elsewhere in this Exhibit B.

a. Agricultural production. Agricultural production and related uses in accordance with the terms and conditions of this Easement.

b. Sale of excess power. The sale of excess power generated in the operation of renewable energy structures and associated equipment or other energy structures that Grantee approves in writing as being consistent with the Purpose of the Easement and in accordance with the terms and conditions of this Easement.

c. Outdoor activities. Temporary or seasonal outdoor activities or events that do not harm the Purpose of the Easement and as permitted in Exhibit B paragraph 2.

d. Enterprises related to agriculture or forestry. Commercial enterprises related to agriculture or forestry including but not limited to agritourism; processing, packaging, and marketing of farm or forest products; and small-scale retail enterprises compatible with agriculture or forestry.

e. Home occupations. Persons living on the Property may conduct customary rural businesses, trades, or professions within existing or permitted structures in a manner that is consistent with the protection of the Conservation Values protected by this Easement.

f. Rental and commercial guest lodging. Grantors may lease or rent any residential dwelling unit, or portion thereof, on the Property, and may provide commercial guest lodging services in connection with such rental. Activities permitted by this subparagraph include short-term vacation rentals, bed and breakfast businesses, guest ranching, agritourism, and ecotourism.

g. Recreational uses. Grantors may engage in recreational uses of the Property as permitted commercial activities, including those recreational uses permitted by this Exhibit B, paragraph 2, provided that all such recreational activities on the Property must remain consistent with the criteria therein and protection and preservation of the Conservation Values.

h. Use of structures for permitted commercial activities. All existing and subsequently constructed structures and improvements permitted by this Easement may be used in conjunction with permitted commercial activities, except that only permitted residential dwelling units may be used for guest lodging, rentals, or other commercial activities permitted in subparagraph b. This paragraph shall not be construed to permit construction or development of any facilities, structures, or improvements on the Property, except as specifically permitted in this Exhibit B, paragraph 4.

i. Third-party agreements. Grantors may enter into agreements with third parties to operate, maintain, or engage in any permitted commercial activity under this Exhibit B, paragraphs 11a-11d, 11f and 11g if such agreements are (i) in writing; (ii) made expressly subject to the terms, conditions, and purposes of this Easement; and (iii) Grantee is expressly authorized in the agreement to enforce this Easement against third-parties who violate the terms, conditions, or purposes of the Easement. All commercial activities must be conducted in a manner and at levels of intensity consistent with perpetual protection of the Conservation Values.

12. Carbon. Grantors retain all rights relating to carbon, which are appurtenant to the Property, as such rights may exist on the date this Easement was executed, or as may be granted, discovered, created, declared, or developed in the future. Such carbon rights include, but are not limited to, the right to trade, sell, transfer, credit, or lease these rights, and the right to use, store, sequester, accumulate, and/or depreciate carbon within the Property by flora that exists, or may exist, on the Property. This Easement shall be interpreted to enhance the security and economic viability of any such carbon rights appurtenant to the Property.

----- END EXHIBIT B -----

EXHIBIT C PROHIBITED USES AND PRACTICES

Any activities inconsistent with the Purpose of this Easement are prohibited. The provisions of this Easement limit the types of agricultural operations that can occur on the Property to those that promote the Purpose of this Easement. The following uses and practices, though not an exhaustive recital of inconsistent uses and practices, are hereby deemed to be inconsistent with the purposes of this Easement and are expressly prohibited, subject to the qualifications below and in Exhibit B:

1. Subdivision. Separate conveyance of a portion of the Property or division or subdivision of the Property is prohibited. Grantors and Grantee agree and intend that the Property will remain as one whole, intact, single piece of real estate. Accordingly, the entire Property described in Exhibit A must be maintained and granted, sold, exchanged, devised, gifted, transferred, or otherwise conveyed in unified title as no more than one (1) parcel. Even if the Property consists of more than one (1) parcel for real estate tax or any other purpose or if it may have been acquired previously as separate parcels, it will be considered one (1) parcel for purposes of this Easement. In all subsequent conveyances the restrictions and covenants of this Easement will apply to the Property as a whole.

Therefore, the division, subdivision, or de facto subdivision of the Property is expressly prohibited. Prohibited property divisions under this Easement include, but are not limited to, any subdivision, short subdivision into remainder tracts, platting, testamentary division, partitions in kind among tenants-in-common or joint tenants, judicial partitions in kind, partitions in kind in bankruptcy, allocation of title or real property interests among partners, shareholders, trustees or trust beneficiaries, or members of any business entity, time-share or interval ownership arrangements, or other process, including tax sales, by which the Property is divided in ownership or in which legal or equitable title to different portions of the Property (including any permanent structures or fixtures on the Property) are held by different owners. Partitions by sale, co-tenancy, or joint tenancy are not prohibited provided that title to the whole Property described in Exhibit A remains in unified, undivided ownership in which each cotenant or joint tenant shall have undivided interests in the whole of the Property. Grantors shall not sell, transfer, or otherwise convey any portion of the Property that constitutes less than the entire Property.

Notwithstanding any provision herein that may be construed to the contrary, the Property may be leased for agricultural purposes, provided any such leases are subordinate to the terms and purposes of this Easement and do not create a de-facto subdivision of the Property.

2. Surface and subsurface mineral exploration and extraction. Surface mining, including extraction or removal of surface or subsurface minerals by any surface mining method, is prohibited in accordance with § 170(h)(5)(B) of the Code and applicable Treasury Regulations. Mining or extraction of soil, sand, gravel, oil, natural gas, fuel, coal, or any other mineral substance owned by Grantors as of the date of this Easement or later acquired by Grantors, using any surface mining, subsurface mining, or dredging method, from the Property (or leasing, selling, or otherwise disposing of the rights thereto) is prohibited, except as expressly permitted by Exhibit B, paragraph 6. Further, there shall be no exploration for or extraction of oil, gas, or other minerals by any method of mining if such activity would impair any Conservation Value of the Property, in Grantee's sole judgment, and no method of mining will be permitted at any time by Grantee that is inconsistent with the conservation purposes of this Easement or that is irretrievably destructive of any significant conservation interest, consistent with Treas. Reg. 1.170A-14(g)(4)(i). If a third party owns or leases the oil, natural gas, or any other mineral rights associated with the Property at the time this Easement is executed, and their interests have not been subordinated to this Easement, Grantors and Grantee must require, to the greatest extent possible, that any oil, natural gas, and mineral exploration and extraction conducted by such third party is conducted in accordance with

this Exhibit C, paragraph 2 and Exhibit B, paragraph 6. Any mineral leases or other conveyances of minerals entered into after the date of this Easement are subordinate to the terms of this Easement and must incorporate by reference this Easement.

3. Alteration of land surface or natural waters. Grading, blasting, filling, sod farming, earth removal or any other activity that will disturb the soil surface or materially alter the topography, surface or subsurface water systems, or wetlands of the Property is prohibited, except as expressly provided for in Exhibit B or in necessary conjunction with a use permitted by Exhibit B. Alteration of the surface of the land includes, but is not limited to, the movement, excavation, or removal of soil, rock, peat, or sod. Nothing in this paragraph shall be interpreted to preclude Grantors from taking emergency actions to mitigate flooding or wildfire risks, provided Grantors provides notice to Grantee of any such emergency actions taken as soon as reasonably practical.

4. Commercial activities and facilities. The establishment of any commercial or industrial activities or facilities on the Property is prohibited, except as provided in Exhibit B. Prohibited activities and facilities include, but are not limited to, commercial feed lots (defined as a confined livestock feeding operation where the owner or operator of the feedlot feeds livestock belonging to others for a fee), sales or service businesses, restaurants, night clubs, campgrounds, trailer parks, motels, hotels, gas stations, retail outlets, or manufacturing or distribution facilities. The retail sale of goods produced and manufactured by such businesses shall not take place on the Property. Commercial recreational activities and facilities are prohibited, except as specifically permitted in Exhibit B, paragraph 11.

5. Dumping and waste storage. The dumping, storage, or disposal of non-compostable refuse on the Property is prohibited, except for nonhazardous wastes generated by activities permitted in Exhibit B, including agricultural and timber management activities, provided such dumping and/or storage of non-hazardous waste does not harm the Conservation Values.

6. Construction. The construction or placement of any improvements, buildings, or other structures is prohibited, except for those structures specifically permitted in Exhibit B, paragraph 4.

7. Campers, trailers, and recreational vehicles. The placing or use of campers, trailers, and recreational vehicles on the Property is prohibited, provided, however, Grantors may store personal campers, trailers, and recreational vehicles within the Building Envelopes defined in Exhibit B, paragraph 4, and Grantors and Grantors' guests may park and use campers, trailers, or recreational vehicles on the Property on a temporary basis to accommodate short-term visitation. Except as provided in Exhibit B, paragraph 4, campers, trailers, or recreational vehicles may not be inhabited or used as residential dwelling units.

8. Billboards. The construction, maintenance, or erection of any billboards is prohibited. Roadside signs are permitted only for the purposes of posting the name of the Property, advertising any business permitted on the Property, controlling public access, providing public notification of this Easement, or advertising the Property for sale or lease.

9. Roads. The construction of roads and granting or reserving of right-of-way easements across or upon the Property are prohibited, except as provided in Exhibit B, paragraph 9. Off-road vehicle courses for all-terrain vehicles, motorcycles, or other motorized vehicles are expressly prohibited.

10. Utilities. The construction of utilities, utility services, or utility infrastructure, and the granting of utility line right-of-way easements is prohibited, except as permitted in Exhibit B, paragraph 10. The granting and expansion of utility transmission lines and utility transmission corridor right-of-way easements is expressly prohibited.

11. Impervious surfaces. Impervious surfaces may not exceed two percent (2%) of the Property, excluding NRCS-approved conservation practices. “Impervious surfaces” are defined as material that does not allow water to percolate into the soil on the Property, including, but not limited to, buildings with or without flooring, paved areas and any other surfaces that are covered by asphalt, concrete, or roofs. This limitation does not include public or other roads owned and controlled by parties with rights superior to the rights conveyed to Grantee by this Easement.

12. Timber harvest. Except as provided in Exhibit B, paragraph 7, the harvest of timber on the Property is prohibited.

13. Conservation Values. Notwithstanding any other provision of this Easement, the impairment of any of the Conservation Values or other significant conservation interests on the Property is prohibited.

14. Farming and sodbusting. Farming, cultivating, and “sodbusting” are prohibited on the Property, except to restore native species after Grantors have obtained Grantee’s prior approval. Temporary non-native cover crops are permitted in native prairie and rangeland restoration activities. For purposes of this Easement, “sodbusting” is defined as any cultivation, discing, plowing, or disturbance of native soils and vegetation by mechanical means, including without limitation engine-powered tractors and other farm machinery and horse and mule drawn plows and discs.

----- END EXHIBIT C -----

EXHIBIT D
ACKNOWLEDGMENT OF RESOURCE DOCUMENTATION REPORT

In accordance with Treasury Regulation § 1.170A-14(g)(5)(i), **MICHAEL V. GREWELL** and **CASSIDY GREWELL AKA CASSIDY (GREWELL) JUDA AKA CASSIDY L. GREWELL**, as Grantors of this Easement, and **THE MONTANA LAND RELIANCE**, as Grantee of this Easement, hereby acknowledge, declare, and agree that they have reviewed the information contained in the Resource Documentation Report and that the Resource Documentation Report is an accurate representation of the condition of the real property and Conservation Values to be protected by this Easement at the time of this grant.

DATED this _____ day of _____, 20____.

MICHAEL V. GREWELL

**CASSIDY GREWELL AKA CASSIDY (GREWELL)
JUDA AKA CASSIDY L. GREWELL**

State of _____)
County of _____)

This instrument was acknowledged before me on the ____ day of _____, 2024, by
MICHAEL V. GREWELL.

(Signature of Notarial Officer)
(Affix Official Stamp To Left)

State of _____)
County of _____)

This instrument was acknowledged before me on the ____ day of _____, 2024, by
CASSIDY GREWELL AKA CASSIDY (GREWELL) JUDA AKA CASSIDY L. GREWELL.

(Signature of Notarial Officer)
(Affix Official Stamp To Left)

THE MONTANA LAND RELIANCE,
a Montana Nonprofit Corporation

By _____
Name: George S. Olsen
Title: Director

State of Montana)
County of _____)

This instrument was acknowledged before me on the ____ day of _____ 2024, by
GEORGE S. OLSEN on behalf of THE MONTANA LAND RELIANCE.

(Signature of Notarial Officer)
(Affix Official Stamp To Left)

EXHIBIT E
SAMPLE OF FORM TO BE USED FOR
ACKNOWLEDGMENT OF VALUE OF
CONSERVATION EASEMENT

_____ of _____, Grantor of a Deed of Conservation Easement dated _____, 20____, and recorded on _____, 20____, as Document No. _____, Records of _____ County, Montana; THE MONTANA LAND RELIANCE, of Helena, Montana, Grantee of said Conservation Easement; and, _____, appraiser of the property subject to the Conservation Easement, (the "Property"), hereby acknowledge, declare, and agree as follows:

1. That Grantor's qualified appraisal determined the value of the Property immediately prior to encumbrance by the grant of the Conservation Easement to be \$_____, and determined the value of the Property immediately after the conveyance of the Conservation Easement to The Montana Land Reliance to be _____ (\$_____). Therefore, Grantor's qualified appraisal determined the fair market value of the Conservation Easement on the date of the grant to be _____ (\$_____).

2. That for purposes of compliance with Treasury Regulation § 1.170A-14(g)(6), and pursuant to Section 10 of the Conservation Easement and the figures set forth in paragraph 1 above:

a. the numerator to be used in the calculation of the Proportionate Share is the fair market value of the Conservation Easement on the date of the grant, which was \$_____;

b. the denominator to be used in the calculation of the Proportionate Share is the fair market value of the Property as a whole, without deduction for the value of the Conservation Easement, on the date of the grant, which was \$_____;

c. The Proportionate Share established by the fraction created by the numerator and denominator above, expressed as a percentage, equals _____ percent (____%).

The original of this Acknowledgment is to be retained in the files of The Montana Land Reliance, or its successors and assigns, at its normal place of business.

DATE

DATE

THE MONTANA LAND RELIANCE

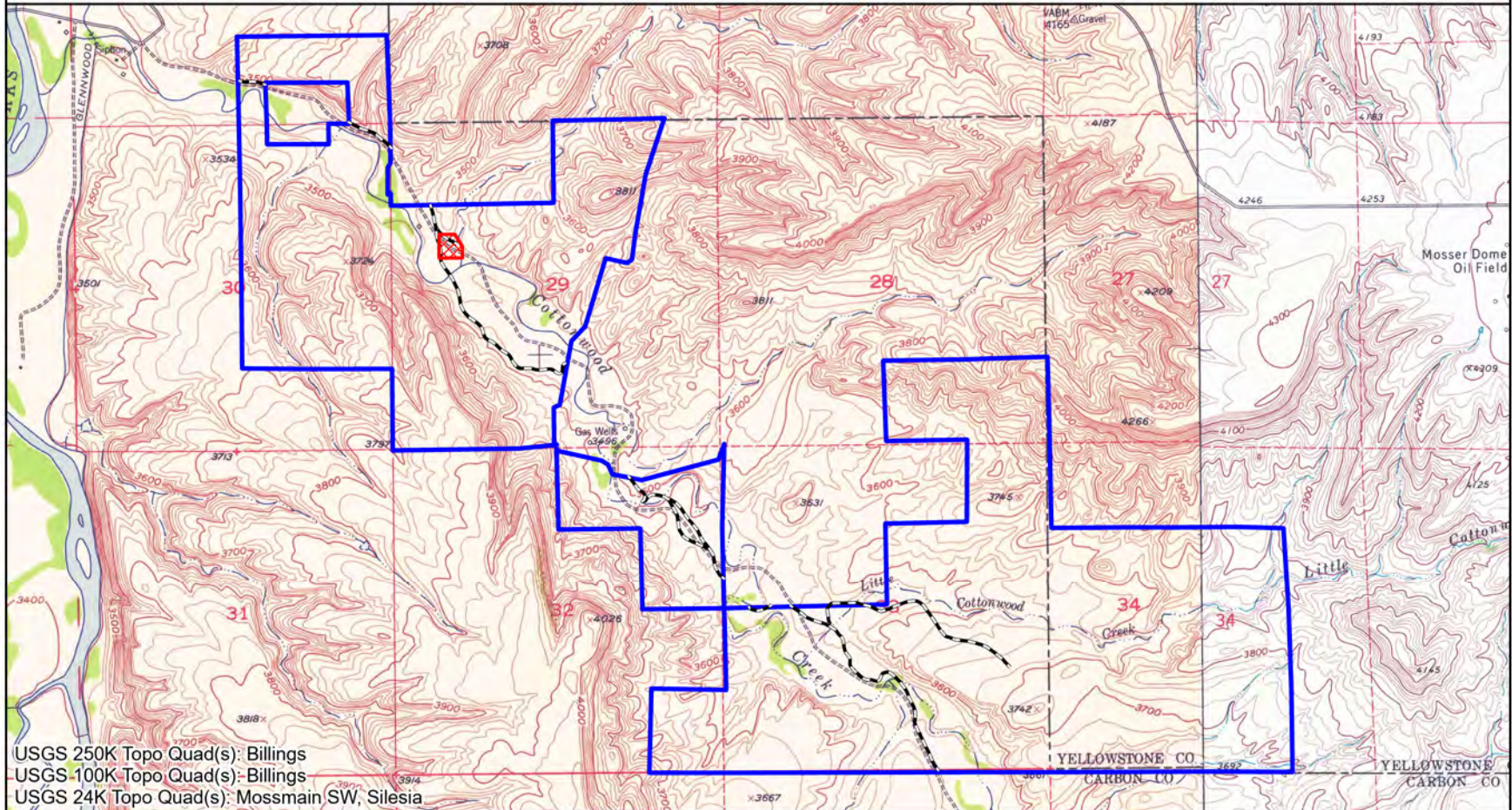
DATE

APPRAISER




EXHIBIT F
BUILDING ENVELOPES, EXISTING ROADS, ETC.

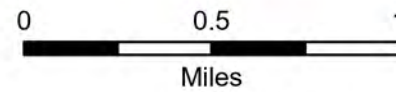
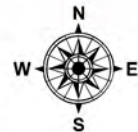
EXHIBIT F-1
BUILDING ENVELOPES VERTICES

EXHIBIT F



USGS 250K Topo Quad(s): Billings
USGS 100K Topo Quad(s): Billings
USGS 24K Topo Quad(s): Mossmain SW, Silesia

-  Easement Boundary
-  Agricultural Building Envelope
-  Existing Roads



Location: T3S, R24E

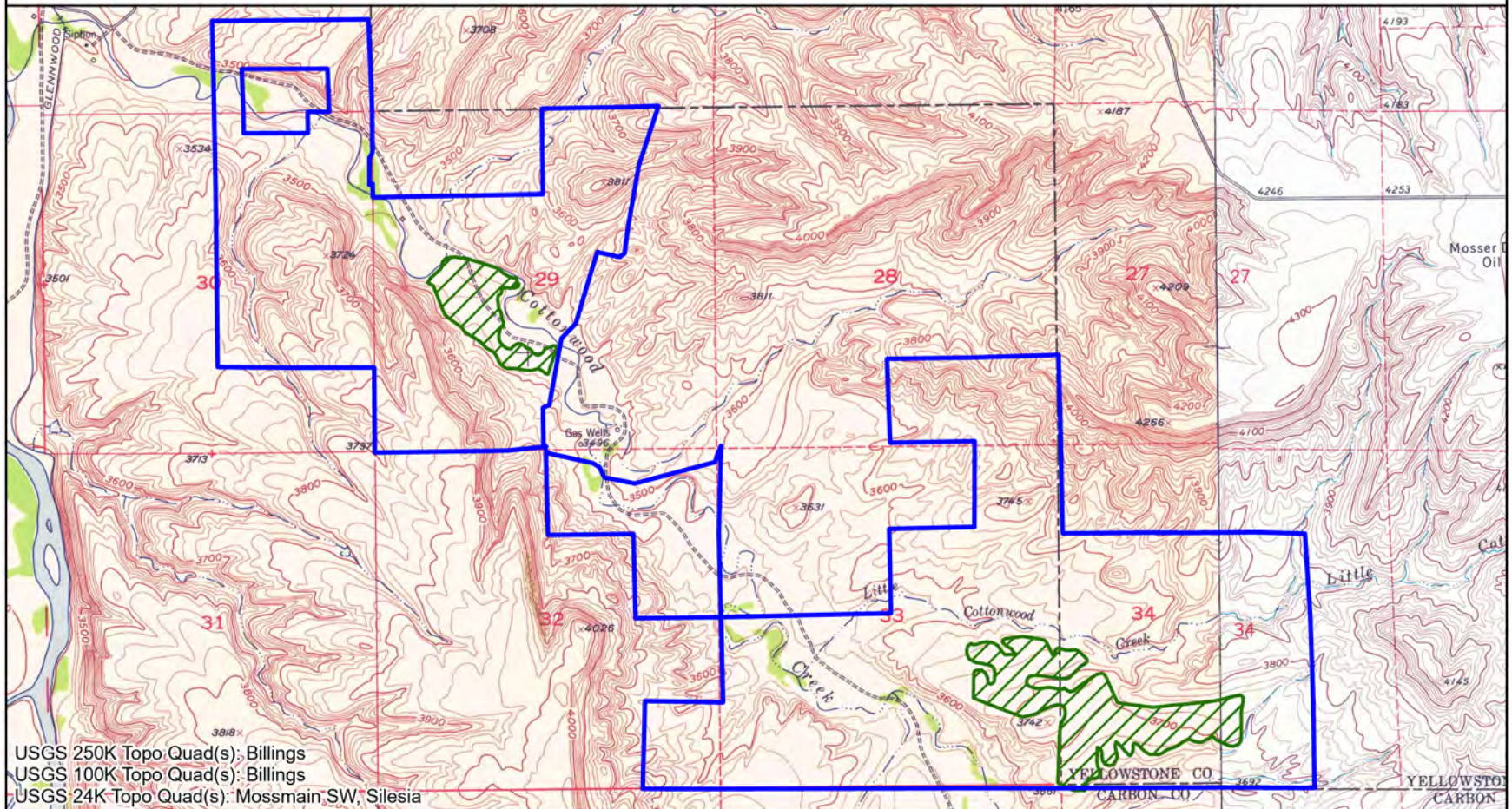




Grewell (Michael) Property

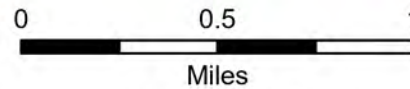
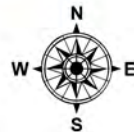
Map Date: April 12, 2024

EXHIBIT G
HAYLAND

EXHIBIT G



-  Easement Boundary
-  Hayland Area



Location: T3S, R24E



Grewell (Michael) Property

Map Date: April 17, 2024

CARBON COUNTY
Planning Office
P.O. Box 466, Red Lodge, MT 59068
Main: (406) 446-1694
Fax: (406) 446-2640

GROUP 2 DEVELOPMENT PERMIT – STAFF REPORT

Date: April 5, 2024; Updated May 9, 2024

To: Carbon County Planning Board/Zoning Commission Members

From: Forrest J. Mandeville, AICP – Contract Planner

RE: **Carbon County Road and Bridge District #3**

Recommendation: Approval

Recommended Motion: *Having reviewed and considered the staff report, public comment, and all of the information presented, I hereby move to approve the Group 2 Development Permit from the Carbon County Road and Bridge District #3 for the construction of a County Road Department storage building.*

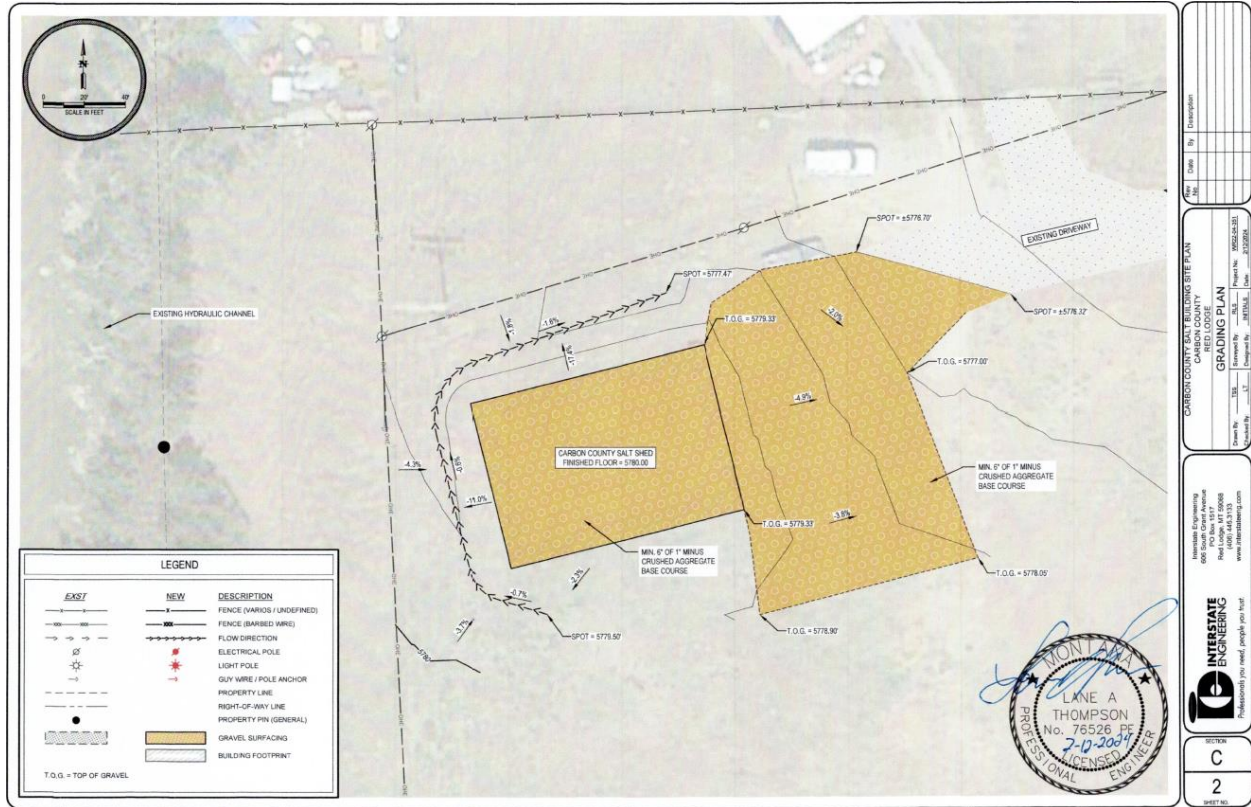
Project/Application Summary:

Commissioner Bill Bullock, on behalf of Carbon County Road and Bridge, has submitted an application to construct a steel and concrete building to store salt and sand for road maintenance on County land on Rodeo Road, west of Red Lodge, south of the fairgrounds. The proposed development is located on Rodeo Road, about ¼ mile north of the intersection with S Airport Road. The property is legally described as Lots 1-12, Block 69 of the Red Lodge Hymer Addition, Section 34, T 7S, R 20E, Carbon County, MT.

Required Board Action:

Under the Development Regulations, the Planning Board, in its role as the Zoning Commission, is tasked with considering the criteria for approval, and approving or conditionally approving an application for a Group 2 Development Permit. The Zoning Commission may deny an application if the approval criteria cannot be met, or it is determined that the development will create a significant adverse impact on surrounding properties or current uses.

The Zoning Commission shall approve, deny, or conditionally approve a Group 2 Development Permit within 60 days of receiving a complete application. The application was received on April 2, 2024, so a decision must be made by June 1, 2024. Surrounding property owners were notified of the pending application by planning staff via mail on April 5, 2024.



Site Plan

Development Regulations – Compliance Review/Findings Summary: (Section references are to the Carbon County Development Regulations unless otherwise noted)

Pursuant to Section V-B.3.c, the Zoning Commission shall consider the following approval criteria for any Group 2 Development Permit:

1. Water Supply: The development shall provide adequate water supply and adequate means of waste water disposal, and adequate disposal of solid and hazardous waste. **There is no on-site water, wastewater, or solid or hazardous waste as part of this application.**
2. Floodplain: The development shall conform to the Carbon County Floodplain regulations. There shall be no development in the floodway. **There is no floodplain in the development area.**
3. Site Design: The development shall be properly graded and appropriate culverts, ditches, settling ponds, and other necessary facilities shall be provided to remove surface runoff in a manner that will not adversely affect adjacent streams, lakes, reservoirs, or public roads. **The site plan indicates grading will occur to ensure proper drainage. Access will be**

from an existing approach from Rodeo Road which accesses other County buildings. **Adherence to the submitted site plan is recommended as a condition of approval.**

4. Setbacks: Proposed buildings or structures may not be erected on property lines or within right-of-ways or easements. All buildings and structures shall be set back 10 feet from any side lot line, 20 feet from a rear lot line and 30 feet from the front lot line or street right of way or easement. **According to the application, the building will be at least 50 feet from the nearest property line.**

5. Access: legal and physical access shall be provided to the tract of land where the development is proposed. Any new proposed access on a County Road will require an approach permit. Approaches on state highways shall be approved by the Montana Department of Transportation. **The site is accessed from Rodeo Road via an existing approach. The Rodeo Road right of way is mostly owned by the City of Red Lodge, with County access on the west side. The applicant has also applied for a rural address, approval of which is pending at time of writing.**



Project Location and Vicinity

6. Agricultural Interference: Development shall not interfere with agricultural operations through the contamination of livestock or irrigation water supplies or obstruct, impair or impede irrigation canals, headgates, ditches, culverts or other irrigation facilities. **The development is near residential uses, the fairgrounds, and an airport. There is a ditch located**

to the west of the property. The site has been used for County road maintenance for several decades and it is unlikely that the addition of a storage building will result in adverse impacts on agriculture. **Discussion at the April 16 County Planning Board meeting indicated that County maintenance use was a more recent development.**

7. Current Uses: Development shall not create significant unmitigated adverse impacts on surrounding properties or current uses. **Since the property has been used for Road and Bridge Department Storage historically, and the development will add a storage building, it is unlikely new significant adverse impacts will be created. Discussion at the April 16 County Planning Board meeting indicated that County maintenance use was a more recent development.**

Planning Board April Meeting Summary:

The Planning Board discussed this application at their meeting of April 16. Discussion centered around possible interference with fair parking. It was also noted that there are outlets for campers in the area and the Board was unsure if the proposed use would interfere with the outlets.

Public comments were received from Elizabeth Testa and Mark Schubert which noted the equipment storage is a relatively new use on the site and expressed concerns about weeds and increased semi traffic on area roads.

The Board was concerned that the site plan was not clear enough to make an informed decision on possible area impacts and thought there might be alternative locations. The Board voted to table discussion to the May 21 meeting in order to do more fact finding.

Staff discussed the concerns of the Board with the applicant. Commissioner Bullock indicated that this location is the only option given the current County land assets in the area and noted the importance of having this facility in this location in order to continue to provide expected levels of road maintenance in the area.

Staff was able to confirm the new storage building will be located outside of the fenced area, near the end of the existing drive, to the west of the west gate to the fairgrounds.

Additional public comments were received after the April meeting from Bruce Schelske who indicated no objection to the proposal but noted difficulty with interpreting the site plan.



Current Equipment on Site



Marked-up Site Plan Showing Location of Shed Relative to Other Area Development

Planning Staff Recommendation:

Planning Staff recommends approval of the Carbon County Road and Bridge District #3 Group 2 Development Permit, pursuant to the following conditions (Section references are to the Carbon County Development Regulations):

1. Obtain all other necessary permits as required by other state or government agencies and adhere to any conditions required.
2. Any deviation from the site plan must be made known to the Planning Office to determine whether or not the deviation is in compliance with the approved development permit or if a new permit is needed.
3. If approved activity on site is inactive for two years this permit is deemed abandoned and a new permit must be obtained prior to activity resuming.
4. Any intensification of use shall be made known to the Carbon County Planning Department to determine whether an amended permit is required.
5. Ingress and egress shall be limited to Rodeo Road, as shown on the site plan.
6. A rural address shall be obtained for the site.